81-936

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1981,

No.

UNITED STATES OF AMERICA

v.

CHARLES GOSS, ET AL

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE FIFTH CIRCUIT

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CHARLES GOSS, ET AL

PETITION FOR A WRIT OF CERTIORARI
TO THE COURT OF APPEALS
FOR THE FIFTH CIRCUIT

The petitioners herein, CHARLES GOSS and Ball Marketing Enterprise, pray that a writ of certiorari issue to review the opinion and judgment of the Court of Appeals for the Fifth Circuit rendered in these proceedings on September 4, 1981.

QUESTIONS PRESENTED

1. Did the Court of Appeals for the Fifth Circuit lack jurisdiction over certain issues involving an interpretation of the Emergency Petroleum Allocation Act - issues which should have been appealed to the Temporary Emergency Court of Appeals?

2. Did the Emergency Petroleum Allocation Act of 1973 and the regulations promulgated therefrom, impliedly repeal or pre-empt the more general criminal statutes found in Title 18 U.S.C.?

INTERESTED PARTIES

Uni Oil, Inc.

Thomas M. "Mick" Hajecate

Thomas H. "Tom" Hajecate

James E. Fisher

Charles R. Akin

Charles Goss

Ball Marketing Enterprises

The Crude Company

John Allen Masek

Mid-Atlantic Petroleum Co., Ltd.

H.C. Iran, Ltd.

R. Stanley Corbitt

Table of Contents

	Page
Questions Presented.	2
Interested Parties	3
Table of Contents.	4
Opinions Below	5
Jurisdiction	5
Constitutional & Statutory Provisions	6
Statement of Case.	7
Reasons for Granting Writ. .	15
Conclusion	22
Appendix A (Provisions of Law)	24
Appendix B (Opinions of Court of Appeals for Fifth Circuit)	25

OPINIONS BELOW

The opinion of the Court of Appeals for the Fifth Circuit, reported in 646 $F_2$946 (5th Cir. 1981), appears at Appendix B, infra, p. 25. The opinion of the Court of Appeals for the Fifth Circuit, denying the Petition for Rehearing and Rehearing en Banc, as yet unreported, appears at Appendix B, infra, p. 25.

JURISDICTION

The order or judgment of the Court of Appeals for the Fifth Circuit was entered on September 4, 1981. This petition for certiorari was filed less than 60 days from the date aforesaid. The jurisdiction of this court is invoked under 28 U.S.C. section 1254 (1).

CONSTITUTIONAL AND STATUTORY PROVISIONS

Citations Only - See Appendix A

10 CFR 211.62

10 CFR 211.72

10 CFR 211.73

10 CFR 212.74

10 CFR 212.131

TABLES OF AUTHORITY

Cases: Page

United States v Uni Oil, 646 $F_2$946 (5th Cir. 1981). . . . 8, 17
United States v Uni Oil, No. 79-2488 (USDC, S.D. TX 1979) 8
Coastal States Marketing, Inc. v New England Petroleum Corp., 604 $F_2$179 (2nd Cir. 1979) 16
Newell v. FEA, 591 $F_2$704 (TECA 1979). 16
Mountain Fuel Supply Co. v Johnson, 586 $F_2$1375 (10th Cir. 1978). . . 18
Mobil Oil v Tully 639 $F_2$912. . . . 18
US v Batchelder, 442 US 114 (U.S. 1979). 21
Busic v US, 446 US 398 (U.S. 1980) 22

Statutes:

15 U.S.C. 754. . . . . 19, 20
15 U.S.C. 751. 11
15 U.S.C. 761. 11
S. Rep. No. 92-507, 92nd Cong. 1st Session 10 16

STATEMENT OF CASE

Course of Proceedings

This petition for certiorari arises out of the decision rendered by the United States Court of Appeals for the Fifth Circuit and reported at 646 F_2 946 (5th Cir. 1981), rehearing and rehearing en banc denied, September 4, 1981. Two different indictments arising out of the United States District Court for the Southern District of Texas were joined for purposes of the appeal. These arose as follows.

On March 7, 1979, a grand jury in the Southern District of Texas returned an indictment against Uni Oil, Ball Marketing Enterprise, Thomas M. Hajecate, Thomas H. Hajecate, James Fischer, Charles Akin, and Charles Goss. This was denominated United States v. Uni Oil, Inc., No. 79-2488. This indictment charged the defendants with conspiring to violate the Racketeer Influenced and Corrupt Organizations Act, (RICO)

in order to miscertify and sell oil that was "old" oil as "new" oil. The defendants were also charged with conducting Uni Oil through a pattern of racketeering activity and separately charged various counts of mail fraud, 18 U.S.C. section 1341 and knowingly making false and fraudulent representations in a matter within the jurisdiction of the Federal Energy Administration, 18 U.S.C. 1001. After briefing the Honorable Ross N. Sterling of the United States District Court for the Southern District of Texas, on May 29, 1979 ordered that the defendants Motions to Dismiss be granted.

On April 30, 1979 a grand jury for the Southern District of Texas returned an indictment against Mid-Atlantic Petroleum Company, Ltd, The Crude Company, Uni Oil, Inc., H.C. Iran, Ltd, John Allen Masek, Thomas H. Hajecate, Thomas M. Hajecate, Charles R. Akin, and R. Stanley Corbitt. This indictment was denominated United

States v. Mid-Atlantic Petroleum Company, Ltd. This indictment charged similar offenses as in the Uni Oil indictment. After extensive briefing and oral argument, the Honorable Ross N. Sterling of the United States District Court for the Southern District of Texas ordered dismissal of the indictments.

The United States Attorney appealed both of these decisions to the United States Court of Appeals for the Fifth Circuit where they were consolidated for briefing and oral argument.

The Fifth Circuit panel, after lengthy consideration and the submission of both supplemental and post argument briefs rendered its opinion on May 19, 1981. The Court of Appeals for the Fifth Circuit reversed the judgment of the district court and on Petition for Rehearing and Petition for Rehearing en banc denied defendants petitions.

The Accusation

In 1973, immediately prior to the time frame alleged in the indictment, the Arab Oil Embargo of 1973 occurred. In response to this embargo Congress passed the Emergency Petroleum Allocation Act of 1973 (EPAA), found in 15 U.S.C. 751 et seq. In 1974, Congress passed the Federal Energy Administration Act, 15 U.S.C. 761 et seq., which created an organization to replace the Federal Energy Office (FEO) which previously had had the responsibility of administering the President's policies under the EPAA. In 1976, Congress passed the Energy Conservation and Production Act which also amended the EPAA. In 1977 the Department of Energy Act abolished the FEA and established the Department of Energy.

By grant of authority from Congress, first the FEO, then the FEA, and later the DOE, promulgated numerous regulations to give some substance to this legislation.

These regulations now fill many volumes and the various interpretations and rulings constitute an additional ten volumes.

These congressional enactments and the regulatory fiats enacted therefrom attempted to place complete governmental control over every aspect of the United States petroleum industry.

Essential to this case was the creation of completely fictitious categories and classifications of crude oil through the enactment of regulations. The earliest regulations established two basic classifications - "old" oil - that is oil produced from a property in production during 1972 but only to the extent that the production was equal to the 1972 level - and "new" oil - everything else. A third classification - "released" oil - was recognized, which allowed a producer to categorize and sell one barrel of "old" oil at "new" oil prices for every barrel

of "new" oil produced. The price of "old" oil was fixed at the 1973 per barrel level. At first, "new" and "released" oil were not controlled.

In 1975 price ceilings were imposed on all categories of oil.

Along with these price controls came the regulations calling for certification of the crude oil. The regulations found in 10 CFR 211.62 defined new crude petroleum, old oil, released crude petroleum and upper tier crude oil. 10 CFR 212.75 encompassed the terms new crude oil, old crude oil, property, released crude oil and stripper well crude oil. 10 CFR 212.73 established the lower tier ceiling price rule and 10 CFR 212.74 established the upper tier ceiling price level.

Quoted in the indictment are the certification requirements for non-producers. These regulations are found in 10 CFR 212.131. During the time frame of the indictment these regulations were amended

four times.

The rules and regulations caused much confusion. Some rules were aimed specifically at producers of oil, some at refiners, some at re-sellers of refined petroleum products and some at retailers. Many of the regulations controlling re-sellers (the category in which defendants find themselves) had been drafted with any eye towards one of the other three categories of the petroleum industry and were made applicable to re-sellers of crude oil only by reference.

The indictment alleges that the defendants miscertified crude oil, particularly "old" oil. According to the government, this was in contravention of 10 CFR 212.131 which the prosecution paraphrased in the indictment.

The indictment, while alleging this miscertification, was couched in terms of Title 18 U.S.C. violations.

Defendants herein moved to dismiss the indictment on several grounds among which were: that the EPAA was too vague and indefinite to form the basis for a criminal prosecution; and, that the EPAA and its regulations had preempted or impliedly repealed the more general criminal statutes found in Title 18 U.S.C.

REASONS FOR GRANTING WRIT

1. The issues raised in the Court of Appeals for the Fifth Circuit involve important questions concerning the jurisdictions of that court and the Temporary Emergency Court of Appeals (TECA).

On the governments appeal to the Fifth Circuit, the defendants questioned the jurisdiction of the Fifth Circuit as to certain issues decided by the district court. It was defendants position that the appeal of these issues should have

properly been presented to the TECA.

The TECA was created to funnel into one court all issues arising out of the Economic Stabilization Act (ESA) and thus gain in consistency of decision. S. Rep. No. 92-507, 92nd Cong. 1st Sess. 10. By incorporating the ESA review provisions in the EPAA, Congress sought to insure consistency of decision under the EPAA.

The TECA has exclusive appellate jurisdiction over all EPAA issues adjudicated whether raised affirmatively or by defense, even if this requires a bifurcated appeal. Coastal States Marketing, Inc., v. New England Petroleum Corp., 604 $F_2$179 (2nd Cir. 1979); Newell v. FEA, 591 $F_2$704 (TECA 1979). The Fifth Circuit in the opinion from which this writ is sought accepted the principal that the TECA has exclusive appellate jurisdiction over EPAA issues raised in defense to an indictment and adjudicated by the district court.

United States v. Uni Oil, Inc., 646 $F_2$946, 949 (5th Cir. 1981).

The two issues which defendants contend are EPAA issues raised by way of defense are:

are the EPAA and its regulations too vague to form the basis of a criminal indictment, and;

did the EPAA in its regulations preempt or impliedly repeal the more general criminal statutes as applied to these defendants?

These issues were raised to the district court and decided in defendants favor.

The government appealed these issues directly to the Court of Appeals for the Fifth Circuit. Defendants contend that these are EPAA issues and should have been appealed to the TECA.

The United States Court of Appeal for the 10th Circuit has held that an EPAA

issue is one "involving the construction, applicability and effect of the EPAA." Mountain Fuel Supply Company, v. Johnson 586 $F_2$1375, 1382 (10th Cir. 1978). See also Mobil Oil v. Tully, 639 $F_2$912 at 915 (2nd Cir. 1981).

The Court of Appeals for the Fifth Circuit held that this was not an EPAA issue because this determination involved only the "EPAA's effect" on other statutes. 646 F_2 at 949. This is in direct conflict with the decisions from the Court of Appeals for the 2nd Circuit and the Court of Appeals from the 10th Circuit, cited above.

2. The issue of preemption is a complex issue that presents a substantial and reoccuring question of federal law.

Defendants assert that the EPAA and its regulatory offspring preempted or impliedly repealed more general criminal statutes. The EPAA created a complex and

everchanging system of control over the petroleum industry. It instructed the industry as to what it could call its product, when it could sell its product, who it could sell it to, who could buy it and at what price. It created fictional categories of products and complex formulations for arriving at such price.

The EPAA also proscribed any conduct which violated the EPAA or any regulation promulgated thereunder. 15 U.S.C. Section 754 (B) states that:

> (B) whoever willfully violates any provision of such regulation, or any such order shall be imprisoned not more than one year, or -
> (i) with respect to activities relating to the production or refining of crude oil, shall be fined not more than $40,000.00 for each violation;
> (ii) with respect to activities relating to the distribution of residual fuel oil or any refined petroleum product (other than at the retail level), shall be fined not more than $20,000.00 for each violation;
> or both.

Subsection (a) also provides for civil penalties calling for similar fines for equivalent violations. The distinguishing feature between the civil and criminal penalties is the one year imprisonment and the fact that it requires a willful violation. Since individual directors, officers and agents of corporations are made responsible for their acts, the Congress inserted a provision insulating these officers, directors and agents from criminal liability except in one particular occasion. Under 15 U.S.C. 754 (a) (4) congress directed that:

> (4) any individual director, officer, or agent of a corporation who knowingly and willfully authorizes, orders, or performs any of the acts or practices constituting in whole or in part a violation of paragraph (3), shall be subject to penalties under this subsection without regard to any penalties to which that corporation may be subject under paragraph (3) except that no such individual director, officer, or agent shall be subject to imprisonment under paragraph (3), unless he also has knowledge, or reasonably should have known of notice of non-compliance received by the corporation from the President.

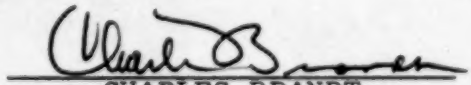
Apparently realizing that the complexity and vagueness of the Department of Energy regulations and the EPAA placed corporate directors, officers and agents in jeopardy of receiving serious criminal penalties, Congress insured that they would suffer no criminal sanction unless they were affirmatively placed on notice that their corporation was in non-compliance with the regulations promulgated pursuant to the EPAA. No such protective device is built into Title 18 U.S.C. although the indictment in this instance is premised upon violations of the EPAA and its regulatory scheme as interpreted through the Title 18 offenses. Even were it not Congress' intent to cause the EPAA to preempt the more general criminal statutes, this is the result.

Defendant's contend that not only is there a "positive repugnancy" between the Title 18 offenses and the EPAA, see United States v. Batchelder, 442 U.S.

114, 122 (U.S. 1979), put that in this instance since there are two federal statutes which could be applied to the defendant, the more specific statute should be given precedence over the more general one. Busic v. United States, 446 U.S. 398, 406 (U.S. 1980).

Conclusion

For the foregoing reasons and those cited in the Writ of Certiorari submitted by defendants The Crude Co., John Allen Masek and James E. Fisher, which defendant Charles Goss and Ball Marketing Enterprise adopt and join in, this petition for a Writ of Certiorari should be granted.



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CERTIFICATE

I certify that a copy of the foregoing has been mailed to all counsel interested this _____day of October, 1981.

CHARLES BRANDT

(50%). The calculation of the national domestic crude oil supply ratio for each month shall take into account entitlement purchase or sale requirements resulting from the correction of reporting errors pursuant to paragraph (j) of § 211.67.

"National domestic crude oil supply ratio" definition, in 44 F. R. 31162 (5/31/79), effective 5/1/79, read as follows until its amendment in 44 F. R. 34468 (6/15/79), effective 7/1/79:

"National domestic crude oil supply ratio" means, for a particular month, the volume of deemed old oil (as defined in § 211.67(b)) included in the aggregate adjusted crude oil receipts of all refiners, decreased by a number of barrels of deemed old oil equal to the number of entitlements issuable to small refiners under § 211.67(e) and the number of entitlements issuable under § 211.67(a)(4), § 211.67(a)(5), and § 211.67(a)(6), divided by the sum of the total volume of the crude oil runs to stills for all refiners for that month and thirty percent (30%) of the total volume of imports of eligible products by eligible firms for that month, *provided that*, for the period July 1, 1978 through June 30, 1979, the reference herein to thirty percent (30%) shall read fifty percent (50%). The calculation of the national domestic crude oil supply ratio for each month shall take into account entitlement purchase or sale requirements resulting from the correction of reporting errors pursuant to paragraph (j) of § 211.67."

[¶ 13,645.22]

[The definition of "new crude petroleum" was deleted in 41 F. R. 13899 (April 1, 1976).]

.01 41 F. R. 13899 (April 1, 1976).

.05 *Historical record.*—"New crude petroleum" definition originated in 39 F. R. 1924 (1/15/74), effective 1/14/74, and read as follows until its deletion in 39 F. R. 17288 (5/14/74), effective 5/10/74:

"New crude petroleum means new crude petroleum as defined in § 212.72 of this chapter."

"New crude petroleum" definition newly originated in 39 F. R. 42246 (12/4/74), effective 11/29/74, and read as follows until its deletion in 41 F. R. 13899 (4/1/76), effective 3/29/76:

"'New crude petroleum' means new crude petroleum as defined in § 212.72 of this chapter."

[¶ 13,645.25]

[The definition of "new refining capacity" was deleted in 42 F. R. 42770 (8/24/77), effective 10/1/77.]

.01 39 F. R. 35472 (October 1, 1974).

.05 *Historical record.*—The definition of "new refining capacity" originated in 39 F. R. 17287 (5/14/74), effective 5/10/74 and was republished without substantive amendment in 39 F. R. 35472 (10/1/74), effective 9/25/74.

The definition of "new refining capacity" in 39 F. R. 35472 (10/1/74), effective 9/25/74; read as follows until its deletion in 42 F. R. 42770 (8/24/77), effective 10/1/77:

"New refining capacity" means, for each refiner, the sum of the capacity of its refineries not included within the definition of refining capacity and operated continuously in the normal course of such refiner's business, a significant portion of which has been completed prior to May 1, 1974. New refining capacity shall either be certified by the FEO or be the subject of a starter allocation under Section 25 of the Oil Import Regulations (32A CFR OI Reg. 1-25).

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[¶ 13,645.26]

"No. 2 heating oil" means heating oil grade No. 2 as defined in American Society for Testing and Materials (ASTM) D396-71.

.01 39 F. R. 42246 (December 4, 1974).

.05 *Historical record.*—"No. 2 heating oil" definition originated in 39 F. R. 42246 (12/4/74), effective 11/29/74.

[¶ 13,645.27]

"No. 2-D diesel fuel" means diesel fuel grade No. 2 as defined in American Society for Testing and Materials (ASTM) D975-71.

.01 39 F. R. 42246 (December 4, 1974).

.05 *Historical record.*—"No. 2-D diesel fuel" definition originated in 39 F. R. 42246 (12/4/74), effective 11/29/74.

[¶ 13,645.28]

"Old oil" means old crude oil as defined in §§ 212.72 and 212.75 of this chapter, except that old oil included in a refiner's adjusted

January 1, 1973, or the actual crude oil runs (on a calendar day average basis) as reported monthly to the Bureau of Mines for January through October, 1973. A refiner who has received a starter allocation under section 25 of the Oil Import Regulations, (32A CFR OI Reg. 1-25) and/or who has requested and received certification of his incremental refinery capacity from the FEO pertaining to a new refinery expansion or reactivation subsequent to the January 1, 1973 capacity report to the Bureau of Mines, may elect to have his net new capacity added to the capacity as reported to the Bureau of Mines on January 1, 1973; provided, however, that for the first reporting period, FEO certification shall not be required as provided in § 211.66. Any refiner's capacity which has become inoperable since the January 1973 report to the Bureau of Mines shall be deducted from refinery capacity."

The definition of "refining capacity" in 39 F. R. 6530 (2/20/74), effective 1/14/74, read as follows until its amendment in 39 F. R. 17287 (5/14/74), effective 5/10/74:

"'Refining capacity' means, for each refinery, the greater of that capacity reported to the Bureau of Mines as of January 1, 1973, or the actual crude oil runs (on a calendar day average basis) as reported monthly to the Bureau of Mines for January through October, 1973. A refiner who has received a starter allocation under section 25 of the Oil Import Regulations (32A CFR OI Reg. 1-25) and/or who has requested and received certification of his new or incremental refinery capacity from the FEO pertaining to a new refinery, expansion or reactivation subsequent to the January 1, 1973 capacity report to the Bureau of Mines, may elect to have his net new capacity added to the capacity as reported to the Bureau of Mines on January 1, 1973; provided, however, that for the first reporting period, FEO certification shall not be required as provided in § 211.66. Any refiner's capacity which has become inoperable since the January 1973 report to the Bureau of Mines shall be deducted from refinery capacity."

The definition of "refining capacity" in 39 F. R. 17287 (5/14/74), effective 5/10/74, was republished without substantive change in 39 F. R. 35472 (10/1/74), effective 9/25/74.

The definition of "refining capacity" in 39 F. R. 35472 (10/1/74), effective 9/25/74 read as follows until its amendment in 42 F. R. 42770 (8/24/77), effective 10/1/74:

"Refining capacity" means, for each refinery, the capacity reported to the Bureau of Mines as of January 1, 1973, as certified by the FEO. Any capacity of a refinery which has ceased to be operated continuously in the normal course of business since the January 1973 report to the Bureau of Mines shall be deducted from refining capacity.

[¶ 13,645.68]

[The definition of "released crude petroleum" was deleted in 41 F. R. 13899 (April 1, 1976).]

.01 39 F. R. 42246 (December 4, 1974).

.05 *Historical record.*—The definition of "released crude petroleum" originated in 39 F. R. 42246 and read as follows until its deletion in 41 F. R. 13899:

"'Released crude petroleum' means released crude petroleum as defined in § 212.72 of this chapter."

[¶ 13,645.70]

"Small refiner" means a refiner, the sum of the capacity of the refineries of which (including the capacity of any person who controls, or is controlled by, or is under common control with such refiner) does not exceed 175,000 barrels per day.

.01 42 F. R. 42770 (August 24, 1977).

.05 *Historical record.*—The definition of "small refiner" originated in 39 F. R. 17287 (5/14/74), effective 5/10/74 and was republished without substantive amendment in 39 F. R. 35472 (10/1/74), effective 9/25/74.

The definition of "small refiner" in 39 F. R. 35472 (10/1/74), effective 9/25/74, read as follows until its amendment in 42 F. R. 42270 (8/24/77), effective 10/1/77:

"Small refiner" means a refiner, the sum of the capacity of the refineries of which (including the capacity of any person who controls, is controlled by, or is under common control with such refiner) does not exceed 175,000 barrels per day. A refiner which is a small refiner as of January 1, 1974 shall not cease to be classified as such by virtue of new refining capacity operational after January 1, 1974 or future refining capacity which results in a refinery capacity for such refiner in excess of 175,000 barrels per day.

[¶ 13,645.75]

[A definition of "Supply/Capacity Ratio" originated in 39 F. R. 1924 (January 15, 1974) and read as follows: "Supply/capacity ratio means the ratio which total supply of non-exempt crude oil bears to total refiner capacity." That definition was not included in the revision of Subpart C that appeared in 39 F. R. 17287 (May 14, 1974).]

[¶ 13,645.80]

"Upper tier crude oil" means, (i) for the period February 1 through August 31, 1976, new crude oil as defined in §§ 212.72 and 212.75 of this chapter and crude oil produced and sold from a stripper well lease as defined in § 212.74 of this chapter, and (ii) effective September 1, 1976, new crude oil as defined in §§ 212.72 and 212.75 of this chapter, except that upper tier crude oil included in a refiner's adjusted crude oil receipts shall not include condensate recovered at the inlet side of a gas processing plant.

.01 41 F. R. 48319 (November 3, 1976).

.05 *Historical record.*—The definition of "upper tier crude oil" originated in 41 F. R. 13899 (April 1, 1976) and read as as follows until its amendment in 41 F. R. 48319:

"'Upper tier crude oil' means, effective February 1, 1976, new crude oil as defined in § 212.72 of this chapter and crude oil produced and sold from a stripper well lease as defined in § 212.74 of this chapter, except that upper tier crude oil included in a refiner's adjusted crude oil receipts shall not include condensate recovered at the inlet side of a gas processing plant."

[¶ 13,843.15]

"New crude oil" means, with respect to a specific property: (a) for months prior to February 1, 1976, the total number of barrels of domestic crude oil produced and sold in a specific month, less (1) the base production control level for that month, and less (2) the current cumulative deficiency;

(b) for months commencing after January 31, 1976, the total number of barrels of domestic crude oil produced and sold in a specific month, less (1) the property's base production control level for that month and less (2) the current cumulative deficiency since February 1, 1976;

(c) for months commencing after May 31, 1979, the total number of barrels of domestic crude oil produced and sold in a specific month, less (1) the base production control level for that month, and less (2) the current cumulative deficiency since June 1, 1979; and

(d) shall not in any period include any number of barrels not certified as new crude oil pursuant to the provisions of § 212.131(a)(1) within the consecutive two-month period immediately succeeding the month in which the crude oil is produced and sold, except where such recertification is explicitly required or permitted by DOE order, interpretation or ruling.

.01 44 F. R. 22010 (April 12, 1979).

.05 *Historical record.*—"New crude petroleum" definition originated in 39 F. R. 1924 (1/15/74), effective 1/14/74, and read as follows until its amendment in 39 F. R. 31622 (8/30/74), effective 8/29/74:

"'New crude petroleum' means the total number of barrels of domestic crude petroleum produced and sold from a property in a specific month less the base production control level for that property."

"New crude petroleum" definition, 39 F. R. 31622 (8/30/74), effective 8/29/74, was amended by adding a new last sentence in 40 F. R. 28447 (7/7/75), effective 7/1/75.

"New crude petroleum" definition, 40 F. R. 28447 (7/7/75), effective 7/1/75, read as follows until its amendment in 41 F. R. 4931 (2/3/76), effective 2/1/75:

"'New crude oil' means, with respect to a specific property, the total number of barrels of domestic crude oil produced and sold in a specific month, less (1) the base production control level for that month, and less (2) the current cumulative deficiency in base production control level crude oil. The current cumulative deficiency in base production control level crude oil is the total number of barrels by which production and sale of crude oil has been less than the base production control level, for all months in which production and sale of crude oil has been less than the base production control level subsequent to the first month in which new crude oil was produced and sold, minus the total number of barrels of domestic crude oil produced and sold in each prior month which was in excess of the base production control level for that month, but which was not classified as new crude oil because of this requirement to reduce the amount of new crude oil in each month by the amount of the current cumulative deficiency in base production control level crude oil. 'New crude oil' shall not include any number of barrels not certified pursuant to the provisions of § 212.131(a)(1) within the consecutive two-month period immediately succeeding the month in which the crude oil is produced and sold, except where such recertification is required or permitted by FEA order, interpretation, or ruling."

"New crude oil" definition, 41 F. R. 4931 (2/3/79), effective 2/1/79, read as follows until its amendment in 44 F. R. 22010 (4/12/79), effective 6/1/79:

"New crude oil" means, with respect to a specific property: (1) prior to February 1, 1976, the total number of barrels of domestic crude oil produced and sold in a specific month, less (A) the base production control level for that month, and less (B) the current cumulative deficiency;

(2) effective February 1, 1976, the total number of barrels of domestic crude oil produced and sold in a specific month, less (A) the property's base production control level for that month and less (B) the current cumulative deficiency since February 1, 1976; and

(3) shall not in either period include any number of barrels not certified as new crude oil pursuant to the provisions of § 212.131(a)(1) within the consecutive two-month period immediately succeeding the month in which the crude oil is produced and sold, except where such recertification is explicitly required or permitted by FEA order, interpretation, or ruling.

[¶ 13,843.25]

"Old crude oil" means: (1) prior to February 1, 1976, the total number of barrels of crude oil produced and sold from a property in a specific month, less the total number of barrels of new crude oil for that property in that month, and less the total number of barrels of released crude oil for that property in that month;

(2) effective February 1, 1976, the total number of barrels of crude oil produced and sold from a property in a specific month, less the total number of barrels of new crude oil for that property in that month.

.01 41 F. R. 4931 (February 3, 1976).

.05 *Historical record.*—"Old crude oil" definition originated in 39 F. R. 31622 (8/30/74), effective 8/29/74, and read as follows until its amendment in 41 F. R. 4931 (2/3/76), effective 2/1/76:

"'Old crude oil' means the total number of barrels of crude oil produced and sold from a property in a specific month, less the total number of barrels of new crude oil for that property in that month, and less the total number of barrels of released crude oil for that property in that month."

[¶ 13,843.35]

Note: For a complete analysis of the definition and concept of "property", consult the source list of Ruling 1977-2, ¶ 16,066.

"Property" means the right to produce domestic crude oil which arises from a lease or from a fee interest. A producer may treat as a separate property each separate and distinct producing reservoir subject to the same right to produce crude oil, provided that such reservoir is recognized by the appropriate governmental regulatory authority as a producing formation that is separate and distinct from, and not in communication with, any other producing formation.

.01 41 F. R. 36171 (August 26, 1976).

.05 *Historical record.*—"Property" definition originated in 39 F. R. 1924 (1/15/74), effective 1/14/74, and was republished without substantive change in 39 F. R. 31622 (8/30/74), effective 8/29/74.

"Property" definition, in 39 F. R. 31622 (8/30/74), effective 8/29/74, read as follows until its amendment in 41 F. R. 4931 (2/3/76), effective 2/1/76:

"'Property' is the right which arises from a lease or from a fee interest to produce domestic crude oil."

"Property" definition, in 41 F. R. 4931 (2/3/76), effective 2/1/76, read as follows until its amendment in 41 F. R. 36171 (8/26/76), effective 9/1/76:

"Property" means the right to produce domestic crude oil, which arises from a lease or from a fee interest.

[¶ 13,843.45]

"Released crude oil" means an amount of crude oil produced from a property in a particular month prior to February 1, 1976, which is equal to the total number of barrels of new crude oil produced and sold from that property in that month. The amount of released crude oil for a property in a particular month shall not exceed the base production control level for that property in that month, and shall not include any number of barrels not certified as such pursuant to the provisions of § 212.131(a)(1) within the consecutive two-month period immediately succeeding the month in which the crude oil is produced and sold, except where such recertification is explicitly required or permitted by FEA order, interpretation, or ruling.

.01 41 F. R. 4931 (February 3, 1976).

.05 *Historical record.*—"Released crude petroleum" definition originated in 39 F. R. 31622 (8/30/74), effective 8/29/74, and was amended to add a new last sentence in 40 F. R. 28447 (7/7/75), effective 7/1/75.

"Released crude petroleum" definition, in 40 F. R. 28447 (7/7/75), effective 7/1/75, read as follows until its amendment in 41 F. R. 4931 (2/3/76), effective 2/1/76:

"'Released crude oil' means that part of the base production control level crude oil for a property in a particular month which is equal to the total number of barrels of new crude oil produced and sold from that property in a specific month. The amount of released crude oil for a property in a particular month shall not exceed the amount of the base production control level crude oil for that property in that month. 'Released crude oil' shall not include any number of barrels not certified as such pursuant to the provisions of § 212.131 (a)(1) within the consecutive two-month period immediately succeeding the month in which the crude oil is produced and sold, except where such recertification is required or permitted by FEA order, interpretation, or ruling."

[¶ 13,843.50]

[The definition of "retroactive increase in price" was deleted in 41 F. R. 4931 (February 3, 1976).]

.01 41 F. R. 4931 (February 3, 1976).

.05 *Historical record.*—"Retroactive increase in price" definition originated in 40 F. R. 28477 (7/7/75), effective 7/1/75, and read as follows until its deletion in 41 F. R. 4931 (2/3/76), effective 2/1/76:

"'Retroactive increase in price' means, prior to July 1, 1975, any price charged or offered in excess of the highest posted price prevailing at 6:00 a. m., local time, on the date the domestic crude oil was sold, for that grade of crude oil at that field, or if there are no posted prices in that field, the related price for that grade of domestic crude oil which is most similar in kind and quality at the nearest field for which prices are posted. 'Retroactive increase in price' means, effective July 1, 1975, any price charged or offered after the close of the calendar month in excess of the highest price prevailing for that grade of crude oil, in first sales between the producer and the purchaser of the domestic crude oil, during the calendar month in which it was produced and sold."

[¶ 13,843.55]

[The definition of "stripper well crude oil" was deleted in 41 F. R. 4931 (February 3, 1976).]

.01 39 F. R. 31622 (August 30, 1974).

.05 *Historical record.*—"Stripper well crude oil" definition originated in 39 F. R. 31622 (8/30/74), effective 8/29/74, and read as follows until its deletion in 41 F. R. 4931 (2/3/76), effective 2/1/76:

"'Stripper well crude oil' means crude oil produced from a stripper well lease, as defined in Part 210 of this chapter."

[¶ 13,844]

§ 212.73 Lower tier ceiling price rule.

[¶ 13,844.05]

(a) *Rule.* Except as provided in § 212.74 with respect to new crude oil; except as provided in § 212.75 for certain crude oil produced from unitized properties; except as provided in § 212.78 for incremental crude oil produced from qualified tertiary enhanced recovery projects; except as provided in § 212.79 with respect to newly discovered crude oil; and except as provided in Subpart C of this part for exempt crude oil, no producer may charge a price higher than the lower tier ceiling price for any first sale of domestic crude oil.

[¶ 13,844.10]

(b) *Lower tier ceiling price determination other than in Alaska and California.* The lower tier ceiling price for a particular grade of domestic crude oil in a particular field other than in Alaska or California is the sum of: (1) The highest posted price at 6 a. m., local time, May 15, 1973, for transactions in that grade of crude oil in that field, or if there was no posted price in that field for that grade of domestic crude oil, the related price for that grade of domestic crude oil which is most similar in kind and quality in the nearest field for which prices were posted; plus (2) $1.35 per barrel.

[¶ 13,844.15]

(c) *Lower tier ceiling price determination in Alaska and California.* In Alaska and California, the lower tier ceiling price for a particular

grade of domestic crude oil in a particular field is the sum of: (1) The highest posted price at 6 a. m., local time, May 15, 1973, for transactions in that grade of crude oil in that field, or if there was no posted price in that field for that grade of domestic crude oil, the related price for that grade of domestic crude oil which is most similar in kind and quality in the nearest field for which prices were posted; plus (2) $1.35 per barrel; plus (3) 2 cents for each degree API gravity between 34 degrees API gravity and 40 degrees API gravity that the domestic crude oil being offered for sale is below 40 degrees API gravity, plus (4) 3 cents for each degree API gravity that the domestic crude oil being offered for sale is below 34 degrees API gravity.

.01 Subsection (a), 44 F. R. 25828 (May 2, 1979); subsections (b)-(c), 41 F. R. 48324 (November 3, 1976).

.05 *Historical record.*—Subsection (a) originated in 39 F. R. 1924 (1/15/74), effective 1/14/74, and read as follows until its amendment in 41 F. R. 4931 (2/3/76), effective 2/1/76:

"(a) *Rule.* Except as provided in section 212.74, no producer may charge a price higher than the ceiling price for the first sale of domestic crude oil.

Subsection (a), 41 F. R. 4931 (2/3/76), effective 2/1/76, was amended by substituting the phrase "stripper well property" for the phrase "stripper well lease" in 41 F. R. 36171 (8/26/76), effective 9/1/76.

Subsection (a), in 41 F. R. 36171 (8/26/76), effective 9/1/76, read as follows until its amendment in 41 F. R. 48319 (11/3/76), effective 10/1/76:

"(a) *Rule.* Except as provided in § 212.74 with respect to new crude oil and stripper well property crude oil, no producer may charge a price higher than the lower tier ceiling price for any first sale of domestic crude oil.

Subsection (a), in 41 F. R. 48319 (11/3/76), effective 10/1/76, read as follows until its amendment in 43 F. R. 33679 (8/1/78), effective 9/1/78:

(a) *Rule.* Except as provided in § 212.74 with respect to new crude oil, no producer may charge a price higher than the lower tier ceiling price for any first sale of domestic crude oil.

Subsection (a) in 43 F. R. 33679 (8/1/78), effective 9/1/78, read as follows until its amendment in 44 F. R. 25828 (5/2/79), effective 6/1/79:

(a) *Rule.* Except as provided in § 212.74 with respect to new crude oil; except as provided in § 212.75 for certain crude oil produced from unitized properties; except as provided in § 212.78 for incremental crude oil produced from qualified tertiary enhanced recovery projects; and except as provided in Subpart C of this Part for exempt crude oil, no producer may charge a price higher than the lower tier ceiling price for any first sale of domestic crude oil.

Subsection (b) originated in 39 F. R. 1924 (1/15/74), effective 1/14/74, and read as follows until its amendment in 41 F. R. 4931 (2/3/76), effective 2/1/76:

"(b) *Ceiling price determination.* The ceiling price for a particular grade of domestic crude oil in a particular field is the sum of (1) the highest posted price at 6 a. m., local time, May 15, 1973, for that grade of crude oil at that field, or if there are no posted prices in that field, the related price for that grade of domestic crude oil which is most similar in kind and quality at the nearest field for which prices are posted; and (2) a maximum of $1.35 per barrel."

Subsection (b), in 41 F. R. 4931 (2/3/76), effective 2/1/76, read as follows until its amendment in 41 F. R. 48324 (11/3/76), effective 10/1/76:

"(b) *Lower tier ceiling price determination.* The lower tier ceiling price for a particular grade of domestic crude oil in a particular field is the sum of (1) the highest posted price at 6 a. m., local time, May 15, 1973, for transactions in that grade of crude

oil in that field, or if there was no posted price in that field for that grade of domestic crude oil, the related price for that grade of domestic crude oil which is most similar in kind and quality in the nearest field for which prices were posted; and (2) $1.35 per barrel."

[¶ 13,845]

§ 212.74 Upper tier ceiling price rule.

[¶ 13,845.05]

(a) *Rule.* Notwithstanding the provisions of § 212.73(a), a producer may in any month charge a price not to exceed the upper tier ceiling price in first sales of new crude oil.

[¶ 13,845.10]

(b) *Upper tier ceiling price determination.* The upper tier ceiling price for a particular grade of domestic crude oil in a particular field is (1) the highest posted price on September 30, 1975, for transactions in that grade of crude oil in that field in September 1975, or if there was no posted price in that field for that grade of domestic crude oil, the related price for that grade of domestic crude oil which is most similar in kind and quality in the nearest field for which prices were posted; less (2) $1.32 per barrel.

[¶ 13,845.15]

(c) *Retroactive increase in price.* No producer may charge or accept a retroactive increase in price for crude oil, other than crude oil which is exempt from this Subpart pursuant to § 212.54 and is sold on September 1, 1976, or thereafter, or crude oil which is exempt from this Subpart pursuant to § 212.55 and is sold on April 5, 1976, or thereafter. Retroactive increase in price means any price charged or offered after the close of the calendar month in excess of the highest price prevailing for that grade of crude oil, in first sales between the producer and the purchaser of the domestic crude oil, during the calendar month in which it was produced and sold.

.01 Subsection (a), 41 F. R. 48319 (November 3, 1976); subsection (b), 41 F. R. 4931 (February 3, 1976); subsections (c)-(d), 41 F. R. 48319 (November 3, 1976).

.05 *Historical record.*—Section 212.74 originated in 39 F. R. 1924 (1/15/74), effective 1/14/74, and read as follows until the definition of C_r in subsection (b) was amended in 39 F. R. 23250 (6/27/74), effective 1/15/74:

"§ 212.74 Special release rule.

"(a) Notwithstanding the provisions of § 212.73(a), a producer of new crude petroleum produced and sold from a property may in the month produced, beginning with the month of September 1973, or in any subsequent month, sell that new crude petroleum without respect to the ceiling price. However, if the amount of crude petroleum produced and sold in any month subsequent to the first month in which new crude petroleum was produced and sold, is less than the base production control level for that property for that month, any new crude petroleum produced from that property during any subsequent month may not be sold pursuant to this paragraph until an amount of the new crude petroleum equal to the difference between the amount of crude petroleum actually

produced from that property during the earlier month and the base production control level for that property for the earlier month has been sold at or below its ceiling price.

"(b) Released crude. Notwithstanding paragraph (a) of this section, if during a particular month new crude petroleum which could be sold at other than the ceiling price pursuant to paragraph (a) of this section is produced from a property, the entire base production control level crude petroleum for that month may be sold at a price which exceeds the ceiling price: *Provided*, That the maximum price charged per barrel of that base production control level crude petroleum does not exceed the lesser of (1) the current free market price for the particular quality or grade of crude petroleum or (2) the price derived pursuant to the following:

$$P_{max} = P_s + \left\{\left[\frac{C_{pr}}{C_{bpcl}} - 1\right]\right\}\{P_m - P_s\}$$

"Where:

P_{max} = Maximum price that may be charged for the crude petroleum (other than new crude) purchased from the property (dollars per barrel);

P_s = Ceiling price of the crude petroleum (dollars per barrel);

C_{bpcl} = Base production control level for property (barrels);

C_{pr} = Total amount of crude petroleum produced from the property during the month (barrels); and

P_m = Current free market price of the particular quality and grade of crude petroleum (dollars per barrel).

"Application of this formula may be illustrated by the following example:

"*Example.* During September 1973, Firm X produces 8,170 barrels of a single grade of crude petroleum from a particular property. During September 1972, 6,420 barrels of crude petroleum were produced from the same property. The ceiling price for the September 1973 crude petroleum is $4.10 per barrel, and its free market price (i.e., the price X can get on the market for the 1,750 barrels of new crude) is $4.95 per barrel. The maximum price that X may charge for the 6,420 barrels of other than new crude petroleum (i.e., old plus released crude) produced in September 1973 is:

$P_{max} = \$4.10 + (8{,}170/6{,}420 - 1)(\$4.95 - \$4.10)$

$P_{max} = \$4.10 + (.27)(\$0.85)$

$P_{max} = \$4.10 + \$0.23$

$P_{max} = \$4.33$/barrel."

"(c) Certification. Each producer of domestic crude petroleum which charges a price above the ceiling price pursuant to the provisions of this section must, with respect to each sale of domestic crude petroleum, certify in writing to the purchaser: (1) the ceiling price of domestic crude petroleum, (2) the amount of the new crude petroleum and (3) the amount of the base production control level crude petroleum. The certification shall also contain a statement that the price charged for the domestic crude petroleum is no greater than permitted pursuant to this subpart."

Subsection (b)'s definition of C_{pr}, in 39 F. R. 23250 (6/27/74), effective 1/15/74, read as follows until section 212.74 was amended in 39 F. R. 31622 (8/30/74), effective 8/29/74:

"C_{pr} = Total amount of crude petroleum produced from the property during the month (barrels), less the number of barrels of new crude petroleum required to be sold during the month at or below the ceiling price pursuant to the second sentence of paragraph (a) of this section; and"

Section 212.74, in 39 F. R. 31622 (8/30/74), effective 8/29/74, read as follows until its amendment in 40 F. R. 29447 (7/7/75), effective 7/1/75:

"Notwithstanding the provisions of § 212.73(a), a producer of crude petroleum may sell in each month, without respect to the ceiling price, the new crude petroleum and the released crude petroleum produced and sold from a property in that month."

Section 212.74, in 40 F. R. 28447 (7/7/75), effective 7/1/75, read as follows until its amendment in 41 F. R. 4931 (2/3/76), effective 2/1/76:

"Notwithstanding the provisions of § 212.73(a), a producer of crude oil may sell in each month, without respect to the ceiling price, the new crude oil and the released crude oil produced and sold from a property in that month; *provided, that,* no producer may charge or accept a retroactive increase in price for new crude oil and released crude oil as defined in § 212.72 of this Part."

Subsections (a) and (c), 41 F. R. 4931 (2/3/76), effective 2/1/76, were amended to substitute the phrase "stripper well property" for the phrase "stripper well lease" in 41 F. R. 36171 (8/26/76), effective 9/1/76.

Subsection (a), in 41 F. R. 36171 (8/26/76), effective 9/1/76, read as follows until its amendment in 41 F. R. 48319 (11/3/76), effective 10/1/76:

"(a) *Rule.* Notwithstanding the provisions of § 212.73(a), a producer may in any month, charge a price not to exceed the upper tier ceiling price, in first sales of new crude oil or crude oil produced from a stripper well property in that month."

Subsection (b) originated in 41 F. R. 4931 (2/3/76), effective 2/1/76.

Subsection (c), in 41 F. R. 36171 (8/26/76), effective 9/1/76, read as follows until its deletion and renumbering of former subsection (d) as (c) in 41 F. R. 48319 (11/3/76), effective 10/1/76:

"(c) *Stripper well properties.* (1) For purposes of this Subpart, 'stripper well property' means a property whose average daily production of crude oil (excluding condensate recovered in non-associated production) per well did not exceed 10 barrels per day during any preceding calendar year beginning after December 31, 1972. 'Average daily production' means the qualified maximum total production of crude oil (excluding condensate recovered in non-associated production) produced from a property, divided by a number equal to the number of days in the year times the number of wells that produced crude oil (excluding condensate recovered in non-associated production) from that property in that year. To qualify as maximum total production, each well on the property must have been maintained at the maximum feasible rate of production, in accordance with recognized conservation practices, and not significantly curtailed by reason of mechanical failure or other disruption in production.

"(2) Crude oil produced from a stripper well property shall not include any number of barrels not certified as such pursuant to the provisions of § 212.131(a)(1) within the consecutive two-month period immediately succeeding the month in which the crude oil is produced and sold, except where such recertification is explicitly required or permitted by FEA order, interpretation, or ruling."

Subsection (d), 41 F. R. 4931 (2/3/76), effective 2/1/76, was suspended with respect to retroactive price increases during April, 1976 for crude oil produced and sold in March, 1976 by 41 F. R. 15566 (4/13/76), and read as follows until it was amended and renumbered as subsection (c) in 41 F. R. 48319 (11/3/76), effective 10/1/76:

"(d) *Retroactive increase in price.* No producer may charge or accept a retroactive increase in price for crude oil. Retroactive increase in price means any price charged or offered after the close of the calendar month in excess of the highest price prevailing for that grade of crude oil, in first sales between the producer and the purchaser of the domestic crude oil, during the calendar month in which it was produced and sold."

[¶ 13,882]

§ 212.130 Effect of failure to file or maintain reports or other documents required by or under certain sections of this part.

[¶ 13,882.05]

(a) If a firm which is required to file a report or other document with the Federal Energy Office pursuant to the provisions of this part or an order issued by the Federal Energy Office does not, within the time limits prescribed, file the report or other document—

(1) The firm may not implement any further price increases including price increases which could otherwise be implemented pursuant to § 212.125 until it has complied with that reporting requirement and has obtained the special approval of the Federal Energy Office.

(2) Except to the extent specifically authorized otherwise by the FEO in any case, based upon a written request of the firm concerned citing hardship or inequity, action is suspended on all requests for exception filed by that firm until it has complied with the reporting requirement; and

(3) The FEO may, whenever it considers it appropriate under the circumstances, order the firm to reduce any of its prices.

[¶ 13,882.10]

(b) Each day that a firm fails to comply with a reporting requirement pursuant to this part pertaining to reports, or with an order under this part, is considered to constitute a separate violation of this part or that order.

.01 39 F. R. 1924 (January 15, 1974).

.05 *Historical record.* — Section 212.130 originated in 39 F. R. 1924 (1/15/74), effective 1/14/74.

[¶ 13,883]

§ 212.131 Certification of domestic crude oil sales.

[¶ 13,883.05]

(a)(1) *Stripper well properties.* With respect to each stripper well property, the producer shall certify in writing to each purchaser of crude oil produced from that property:

(i) that the property concerned has qualified as a stripper well property; and

(ii) the average daily production per well for the 12 month period during which the property qualified as a stripper well property. The certification required under this paragraph (a)(1) of this section shall be made (i) within the consecutive two-month period immediately succeeding the month of September 1976, with respect to any property which qualified as a stripper well property during or before the month of September 1976; and (ii) with respect to any property which qualifies as a stripper well property during or after the month of October 1976, within the two month period immediately succeeding the first month that such property qualifies as a stripper well property.

(2) *Non-stripper well properties.* (i) With respect to each sale of crude oil from a property which has not qualified as a stripper well property, the producer shall certify in writing to the purchaser the number of barrels, if any, of—

(A) lower-tier ("old") crude oil (separately identifying any California lower-tier crude oil, as defined in § 211.62 of Part 211 of this chapter, and the gravity in degrees API of such California lower tier crude oil at the time of the sale);

(B) upper-tier ("new") crude oil (separately identifying any California upper tier crude oil, as defined in § 211.62 of Part 211 of this chapter, and the gravity in degrees API of such California upper tier crude oil at the time of the sale), excluding any crude oil transported through the trans-Alaska pipeline;

(C) Crude oil transported through the trans-Alaska pipeline;

(D) Incremental tertiary crude oil as determined pursuant to § 212.78; and

(E) Newly discovered crude oil as determined pursuant to § 212.79.

With respect to any property (except a property with respect to which any amount of crude oil is or at any time has been certified by the producer as incremental tertiary crude oil) which has not qualified as a stripper well property, and from which crude oil is only sold to one purchaser, the requirements of this paragraph (a)(2)(i) may be complied with by a one-time certification to the purchaser of the property's monthly base production control level determined pursuant to § 212.72, whether based upon production and sale of crude oil in 1972 or upon production and sale of old crude oil in 1975, and, if applicable, either the property's adjusted base production control level determined pursuant to § 212.76 or the information necessary to compute such adjusted base production control level pursuant to § 212.76; *provided, however,* that the producer shall certify to the purchaser the amounts and gravity of California lower tier crude oil and California upper tier crude oil in each sale.

(ii) With respect to each property which has not qualified as a stripper well property, the producer shall certify in writing once to each purchaser of crude oil produced and sold from that property:

(A) the highest posted price at 6 a. m., local time, May 15, 1973, for transactions in that grade of crude oil in that field, or if there was no posted price in that field for that grade of domestic crude oil, the related price for that grade of domestic crude oil which is most similar in kind and quality in the nearest field for which prices were posted; and

(B) the highest posted price on September 30, 1975 for transactions in that particular grade of crude oil in that field in September 1975, or if there was no posted price in that field for that grade of domestic crude oil, the related price for that grade of domestic crude oil which is most similar in kind and quality in the nearest field for which prices were posted.

(iii) The certification required under this paragraph (a)(2) of this section shall be made within the consecutive two-month period immediately following the month of September 1976, or, with respect to any property from which crude oil has not been produced and sold prior to September 30, 1976, the certification required under this paragraph (a)(2) of this section shall be made within the two-month period immediately following the first month in which crude oil is produced and sold. With respect to any property for which a base production control level is determined pursuant to the provisions of subparagraph (c)(1) of the definition of "Base production control level," the certification required under this paragraph (a)(2) of this section shall be made within the two-month period immediately following the month of June 1979.

(3) *Unitized properties.* (i) With respect to each sale of crude oil from a unitized property for which the producer has determined a unit base production control level, the producer shall certify in writing to the purchaser the number of barrels of—

(A) lower-tier ("old") crude oil (separately identifying any California lower tier crude oil, as defined in § 211.62 of Part 211 of this chapter, and the gravity in degrees API of such California lower tier crude oil at the time of the sale);

(B) upper-tier ("new") crude oil, if any (separately identifying any California upper tier crude oil, as defined in § 211.62 of Part 211 of this chapter, and the gravity in degrees API of such California upper tier crude oil at the time of the sale), including either "actual new crude oil" or "imputed new crude oil" determined pursuant to § 212.75(b), but excluding any crude oil transported through the trans-Alaska pipeline;

(C) Crude oil transported through the trans-Alaska pipeline, if any;

(D) Incremental tertiary crude oil determined pursuant to § 212.78;

(E) Imputed stripper well crude oil, if any, determined pursuant to § 212.75(b); and

(F) Imputed newly discovered crude oil, if any, determined pursuant to § 212.75(b).

With respect to any unitized property (except such a property with respect to which any amount of crude oil is or at any time has been certified by the producer as incremental tertiary crude oil) for which the producer has determined a unit base production control level, and from which crude oil is only sold to one purchaser, the requirements of this paragraph (a)(3)(i) may be complied with by a one-time written certification to the purchaser of—

(A) the monthly unit base production control level, determined pursuant to § 212.75(b);

(B) the number of barrels of "imputed new crude oil," if any, determined pursuant to § 212.75(b), excluding any crude oil transported through the trans-Alaska pipeline;

(C) the number of barrels of crude oil transported through the trans-Alaska pipeline, if any; and

(D) the number of barrels of imputed stripper well crude oil, if any, determined pursuant to § 212.75(b); *provided, however,* that the producer shall certify to the purchaser the amounts and gravity of California lower tier crude oil and California upper tier crude oil in each sale.

(ii) With respect to each unitized property for which the producer has determined a unit base production control level, the producer shall certify in writing once to each purchaser of crude oil produced from the property:

(A) the highest posted price at 6 a. m., local time, May 15, 1973, for transactions in that grade of crude oil in that field, or if there was no posted price in that field for that grade of domestic crude oil, the related price for that grade of domestic crude oil which is most similar in kind and quality in the nearest field for which prices were posted; and

(B) the highest posted price on September 30, 1975, for transactions in that particular grade of crude oil in that field in September 1975, or if there was no posted price in that field for that grade of domestic crude oil, the related price for that grade of domestic crude oil which is most similar in kind and quality in the nearest field for which prices were posted.

(iii) The certification required under this paragraph (a)(3) of this section shall be made within the consecutive two-month period immediately following the month of September 1976, or, with respect to any unitized property for which a unit base production control level has not been established prior to September 30, 1976, the certification required under this paragraph (a)(3) of this section shall be made within the consecutive two-month period immediately following the first month in which such unit base production control level is established. With respect to any unitized property for which a unit base production control level is established pursuant to the provisions

of § 212.75(g), the certification required under this paragraph (a)(3) of this section shall be made within the two-month period immediately following the month of June 1979.

(4) *Other domestic crude oils the first sale of which is exempt from this part.* (i) With respect to each sale of crude oil exempt from the provisions of this part, other than crude oil produced from a stripper well property, the producer shall certify in writing once to each purchaser of crude oil produced and sold from that property that the first sale of crude oil produced and sold from that property is exempt from the provisions of this part.

(ii) For purposes of this paragraph (a)(4), domestic crude oil the first sale of which is exempt from the provisions of this part includes U. S.-owned petroleum sold by the Secretary of the Navy under the Naval Petroleum Reserves Production Act of 1976 (Pub. L. 94-258); but domestic crude oil the first sale of which is exempt from this part does not include incremental tertiary crude oil determined pursuant to § 212.78.

(5) *New purchasers.* With respect to any purchaser which has not purchased crude oil from the property (or the unitized property) concerned prior to September 30, 1976, the certifications required under paragraphs (a)(1), (a)(2), and (a)(3) of this section shall be made within the consecutive two-month period immediately following the first month in which such purchaser purchases crude oil from that property or unitized property.

[¶ 13,883.10]

(b)(1) Each seller of domestic crude oil, other than a producer of domestic crude oil covered by paragraph (a) of this section, shall, with respect to each sale of domestic crude oil other than an allocation sale pursuant to § 211.65 of Part 211, or a sale in which no volumes of domestic crude oil are deemed to have been transferred pursuant to § 211.67(g) of Part 211, certify in writing to the purchaser the respective volumes of and respective per barrel prices for the—

(i) lower-tier ("old") crude oil (separately identifying any California lower tier crude oil, as defined in § 211.62 of Part 211 of this chapter, and the gravity in degrees API of such California lower tier crude oil at the time of the sale);

(ii) upper-tier ("new") crude oil (separately identifying any California upper tier crude oil, as defined in § 211.62 of Part 211 of this chapter, and the gravity in degrees API of such California upper tier crude oil at the time of the sale), exclusive of any crude oil transported through the trans-Alaska pipeline;

(iii) crude oil transported through the trans-Alaska pipeline;

(iv) stripper well crude oil;

(v) incremental tertiary crude oil; and

(vi) other domestic crude oils the first sale of which is exempt from the provisions of this part—included in the volume of domestic crude oil so sold. The certification shall also contain a statement that the price charged for the domestic crude oil is no greater than the maximum price permitted pursuant to this part.

(2) Each seller of domestic crude oil, other than a producer of domestic crude oil, shall make the certification required by this paragraph as soon as practicable after receipt of the required certifications from its sellers, but in no event later than 30 days following such receipt. However, if the domestic crude oil is not sold until after the expiration of the thirty-day period, the certification required by this paragraph shall be made within ten days following the sale of the domestic crude oil.

(3) All certifications required by this paragraph shall relate only to the actual volumes of crude oil included in any mixed blend of crude oil and other refined petroleum products and residual fuel oil.

[¶ 13,883.15]

(c) No firm may sell domestic crude oil unless it provides the certification required by this section. No firm may knowingly purchase domestic crude oil for which there is no certification as required by this section; provided, however, that the provisions of this paragraph do not apply to the sale of domestic crude oil to a firm under circumstances of economic or other coercion in which the buyer, because of its need for crude oil, had no reasonable alternative but to purchase the domestic crude oil for which there is no certification, and such firm promptly reports the purchase to the Federal Energy Administration for investigation.

[¶ 13,883.20]

(d) All certifications required by this section shall be in writing, either upon an invoice or billing or by separate instrument, and shall be effective only when delivered to and received by the purchaser of domestic crude oil.

.01 Subsection (a)(1), 42 F. R. 41565 (August 17, 1977); subsection (a)(2)(i), 44 F. R. 25828 (May 2, 1979); subsection (a)(2)(ii), 42 F. R. 62897 (December 14, 1977); subsection (a)(2)(iii), 44 F. R. 22010 (April 12, 1979); subsection (a)(3)(i), 44 F. R. 25828 (May 2, 1979); subsections (a)(3)(ii), 42 F. R. 62897 (December 14, 1977); subsection (a)(3)(iii), 44 F. R. 22010 (April 12, 1979), subsection (a)(4), 43 F. R. 33679 (August 1, 1978); subsection (a)(5), 42 F. R. 41565 (August 17, 1977); subsection (b)(1), 43 F. R. 33679 (August 1, 1978); subsections (b)(1)(i)-(b)(1)(ii), 43 F. R. 26540 (June 20, 1978), subsections (b)(1)(iii)-(b)(1)(v), 42 F. R. 64856 (December 29, 1977); subsection (b)(2), 42 F. R. 41565 (August 17, 1977); subsections [illegible], 42 F. R. 62897 (December 14, 1977).

.2 Historical record.—Section 212.131 originated in 39 F. R. 31622 (8/30/74), effective 8/29/74, and read as follows until its amendment in 39 F. R. 42246 (12/4/74), effective 11/29/74:

§ 212.131 Certification of domestic crude petroleum sales.

Each producer and each seller of domestic crude petroleum shall, with respect to each sale of domestic crude petroleum other than an allocation sale pursuant to Subpart C of Part 211, certify in writing to the purchaser: (a) The ceiling price of that domestic crude petroleum (in a first sale), (b) the amount of stripper well crude petroleum, (c) the amount of new crude petroleum, (d) the amount of released crude petroleum, and (e) the amount of old crude petroleum. The certification shall also contain a statement that the price charged for the domestic crude petroleum is no greater than permitted pursuant to this part.

In 39 F. R. 42246 (11/29/74), effective 11/29/74, section 212.131 became subsection (a) when (b) and (c) were added.

Subsection (a)(1), in 39 F. R. 42246 (11/29/74), effective 11/29/74, read as follows until its amendment in 41 F. R. 4931 (2/3/76), effective 2/1/76:

(a)(1) Each producer of domestic crude petroleum shall, with respect to a first sale of domestic crude petroleum, certify in writing to the purchaser: (i) the ceiling price of that domestic crude petroleum, (ii) the amount of stripper well crude petroleum, (iii) the amount of new crude petroleum, (iv) the amount of released crude petroleum, and (v) the amount of old crude petroleum, *provided* that the certification requirements of this paragraph (a)(1) may be complied with by a one-time certification by a producer to the purchaser as to the base production control level crude petroleum for each month of 1972 for the particular property. The certification shall also contain a statement that the price charged for the domestic crude petroleum is no greater than the maximum price permitted pursuant to this part.

Subsection (a)(1), in 41 F. R. 4931 (2/3/76), effective 2/1/76, read as follows until its amendment in 41 F. R. 35171 (8/26/76), effective 9/1/76:

(a)(1) Each producer of domestic crude oil shall, with respect to a first sale of domestic crude oil, certify in writing to the purchaser: (i) the ceiling price or prices of that domestic crude oil, (ii) the amount of stripper well crude oil, (iii) the amount of new crude oil, (iv) the amount of released crude oil (produced and sold prior to February 1, 1976), and (v) the amount of old crude oil, provided that the certification requirements of this paragraph (a)(1) may be complied with by a one-time certification by a producer to the purchaser as to the base production control level for each month of 1972 for the particular property (prior to February 1, 1976) or as to the base production control level for average monthly old crude oil production and sale in 1972 or 1975 (effective February 1, 1976), and the lower and upper tier ceiling prices for that domestic crude oil. The certification shall also contain a statement that the price charged for the domestic crude oil is no greater than the maximum price permitted pursuant to this part. Each producer of domestic crude oil shall, in the month of February 1976, certify in writing to each purchaser for each property whether 1972 or 1975 will thereafter be used to determine the property's base production control level.

Subsection (a)(1), in 41 F. R. 35171 (8/26/76), effective 9/1/76, read as follows until its amendment in 41 F. R. 43393 (10/1/76), effective 9/1/76:

§ 212.131 Certification of domestic crude oil sales.

(a)(1) *Stripper well properties.* With respect to each stripper well property, the producer shall certify in writing to each purchaser of crude oil produced from that property:

(i) That the property concerned has qualified as a stripper well property;

(ii) The average daily production for the 12 month period during which the property qualified as a stripper well property; and

(iii) The highest posted price on September 30, 1975, for transactions in that particular grade of crude oil in that field in September 1975, or if there was no posted price in that field for that grade

of domestic crude oil, the related price for that grade of domestic crude oil which is most similar in kind and quality in the nearest field for which prices were posted.

The certification required under paragraph (a)(1) of this section shall be made (i) on or before October 1, 1976, with respect to any property which qualified as a stripper well property on or before August 1, 1976; and (ii) with respect to any property which qualifies as a stripper well property after August 1, 1976, within 60 days from the date that such property qualifies as a stripper well property.

Subsection (a)(2) originated in 39 F. R. 42246 (12/4/74), effective 11/29/74, and read as follows until its amendment in 40 F. R. 28447 (7/7/75), effective 7/1/75:

(2) Each seller of domestic crude petroleum, other than a producer of domestic crude petroleum covered by paragraph (a)(1) of this section shall, with respect to each sale of domestic crude petroleum other than (i) an allocation sale pursuant to § 211.65 of this chapter, or (ii) a sale in which no volumes of old crude petroleum are deemed to have been transferred pursuant to § 211.67(g) of this chapter, certify in writing to the purchaser the amount of old crude petroleum included in the volume of domestic crude petroleum so sold. The certification shall also contain a statement that the price charged for the domestic crude petroleum is no greater than the maximum price permitted pursuant to this part.

Subsection (a)(2), in 40 F. R. 28447 (7/7/75), effective 7/1/75, read as follows until its amendment in 41 F. R. 36172 (8/26/76), effective 9/1/76:

(2) Each seller of domestic crude petroleum, other than a producer of domestic crude petroleum covered by paragraph (a)(1) of this section shall, with respect to each sale of domestic crude petroleum other than (i) an allocation sale pursuant to § 211.65 of this chapter, or (ii) a sale in which no volumes of old crude petroleum are deemed to have been transferred pursuant to § 211.67(g) of this chapter, certify in writing to the purchaser the amount of old crude petroleum included in the volume of domestic crude petroleum so sold. The certification shall also contain a statement that the price charged for the domestic crude petroleum is no greater than the maximum price permitted pursuant to this part.

Each seller of domestic crude petroleum, other than a producer of domestic crude petroleum, shall make the certification required by this paragraph as soon as practicable after receipt of the required certifications from its sellers, but in no event later than 30 days following such receipt. However, if the domestic crude petroleum is not sold until after the expiration of the thirty-day period, the certification required by this paragraph shall be made within ten days following the sale of the domestic crude petroleum.

Subsection (a)(2), in 41 F. R. 36172 (8/26/76), effective 9/1/76, read as follows until its amendment in 41 F. R. 37309 (9/3/76), effective 9/1/76:

(2) *Non-stripper well properties.* (i) With respect to each sale of crude oil from a property which has not qualified as a stripper well property, the producer shall certify in writing to the purchaser the number of barrels of new crude oil and the number of barrels of old crude oil. With respect to any property which has not qualified as a stripper well property, and from which crude oil is only sold to one purchaser, the requirements of this paragraph (a)(2)(A) may be complied with by a one-time certification to the purchaser of the property's monthly base production control level determined pursuant to 10 CFR 212.72, and whether based upon production and sale of crude oil in 1972 or upon production and sale of old crude oil in 1975.

(ii) With respect to each property which has not qualified as a stripper well property, the producer shall certify in writing once to each purchaser of crude oil produced and sold from that property:

(A) the highest posted price at 7 a. m. local time, May 15, 1973, for transactions in that grade of crude oil in that field, or if there was no posted

price in that field for that grade of domestic crude oil, the related price for that grade of domestic crude oil which is most similar in kind and quality in the nearest field for which prices were posted; and

(B) the highest posted price on September 30, 1975 for transactions in that particular grade of crude oil in that field in September 1975, or if there was no posted price in that field for that grade of domestic crude oil, the related price for that grade of domestic crude oil which is most similar in kind and quality in the nearest field for which prices were posted.

(iii) The one-time certification required under paragraph (a)(2)(ii) of this section, and the one-time certification permitted under paragraph (a)(2)(i) of this section, shall be made on or before October 1, 1975, provided that with respect to any property from which crude oil has not been produced and sold prior to August 1, 1976, the one-time certification required under paragraph (a)(2)(ii) of this section, and the one-time certification permitted under paragraph (a)(2)(A) of this section, shall be made within 60 days from the date when such crude oil is first produced and sold.

Subsection (a)(2), in 41 F. R. 37309 (9/3/76), effective 9/1/76, read as follows until its amendment in 41 F. R. 43393 (10/1/76), effective 9/1/76:

(2) *Non-stripper well properties.* (i) With respect to each sale of crude oil from a property which has not qualified as a stripper well property, the producer shall certify in writing to the purchaser the number of barrels of new crude oil and the number of barrels of old crude oil. With respect to any property which has not qualified as a stripper well property, and from which crude oil is only sold to one purchaser, the requirements of this paragraph (a)(2)(i) may be complied with by a one-time certification to the purchaser of the property's monthly base production control level determined pursuant to 10 CFR 212.72, and whether based upon production and sale of crude oil in 1972 or upon production and sale of old crude oil in 1975.

(ii) With respect to each property which has not qualified as a stripper well property, the producer shall certify in writing once to each purchaser of crude oil produced and sold from that property:

(A) The highest posted price at 6 a. m., local time, May 15, 1973, for transactions in that grade of crude oil in that field, or if there was no posted price in that field for that grade of domestic crude oil, the related price for that grade of domestic crude oil which is most similar in kind and quality in the nearest field for which prices were posted; and

(B) The highest posted price on September 30, 1975 for transactions in that particular grade of crude oil in that field in September 1975, or if there was no posted price in that field for that grade of domestic crude oil, the related price for that grade of domestic crude oil which is most similar in kind and quality in the nearest field for which prices were posted.

(iii) The one-time certification required under paragraph (a)(2)(ii) of this section, and the one-time certification permitted under paragraph (a)(2)(i) of this section, shall be made on or before October 1, 1975, provided that with respect to any property from which crude oil has not been produced and sold prior to August 1, 1976, the one-time certification required under paragraph (a)(2)(ii) of this section, and the one-time certification permitted under paragraph (a)(2)(i) of this section, shall be made within 60 days from the date when such crude oil is first produced and sold.

Subsection (a)(2)(i), in 41 F. R. 43393 (10/1/76), effective 9/1/76, read as follows until its amendment in 42 F. R. 41565 (8/17/77), effective 6/1/77:

(2) *Non-stripper well properties.* (i) With respect to each sale of crude oil from a property which has not qualified as a stripper well property, the producer shall certify in writing to the purchaser the number of barrels of new crude oil and the number of barrels of old crude oil. With respect to any property which has not qualified as a stripper well property, and from which crude oil is

only sold to one purchaser, the requirements of this paragraph (a)(2)(i) of this section may be complied with by a one-time certification to the purchaser of the property's monthly base production control level determined pursuant to 10 CFR 212.72, whether based upon production and sale of crude oil in 1972 or upon production and sale of old crude oil in 1975, and, if applicable, either the property's adjusted base production control level determined pursuant to 10 CFR 212.76 or the information necessary to compute such adjusted base production control level pursuant to 10 CFR 212.76.

Subsection (a)(2)(i), in 42 F. R. 41565 (8/17/77), effective 6/1/77 read as follows until its amendment in 42 F. R. 62897 (12/14/77), effective 1/1/78:

(2) *Non-stripper well properties.* (i) With respect to each sale of crude oil from a property which has not qualified as a stripper well property, the producer shall certify in writing to the purchaser the number of barrels, if any, of—

(A) lower-tier ("old") crude oil;

(B) upper-tier ("new") crude oil, excluding any crude oil transported through the trans-Alaska pipeline; and

(C) crude oil transported through the trans-Alaska pipeline.

With respect to any property which has not qualified as a stripper well property, and from which crude oil is only sold to one purchaser, the requirements of this paragraph (a)(2)(i) may be complied with by a one-time certification to the purchaser of the property's monthly base production control level determined pursuant to § 212.72, whether based upon production and sale of crude oil in 1972 or upon production and sale of old crude oil in 1975, and, if applicable, either the property's adjusted base production control level determined pursuant to § 212.76 or the information necessary to compute such adjusted base production control level pursuant to § 212.76.

Subsection (a)(2)(i), in 42 F. R. 62897 (12/14/77), effective 1/1/78, read as follows until its amendment in 43 F. R. 26540 (6/20/78), effective 6/1/78:

(2) *Non-stripper well properties.* (i) with respect to each sale of crude oil from a property which has not qualified as a stripper well property, the producer shall certify in writing to the purchaser the number of barrels, if any, of—

(A) lower tier ("old") crude oil (separately identifying any California lower tier crude oil, as defined in § 211.62 of Part 211 of this chapter);

(B) upper tier ("new") crude oil, excluding any crude oil transported through the trans-Alaska pipeline; and

(C) crude oil transported through the trans-Alaska pipeline.

With respect to any property which has not qualified as a stripper well property, and from which crude oil is only sold to one purchaser, the requirements of this paragraph (a)(2)(i) may be complied with by a one-time certification to the purchaser of the property's monthly base production control level determined pursuant to § 212.72, whether based upon production and sale of crude oil in 1972 or upon production and sale of old crude oil in 1975, and, if applicable either the property's adjusted base production control level determined pursuant to §212.76 or the information necessary to compute such adjusted base production control level pursuant to § 212.76.

Subsection (a)(2)(i), in 43 F. R. 26540 (6/20/78), effective 6/1/78, read as follows until its amendment in 43 F. R. 33679 (8/1/78), effective 9/1/78:

(2) *Non-stripper well properties.* (i) with respect to each sale of crude oil from a property which has not qualified as a stripper well property, the producer shall certify in writing to the purchaser the number of barrels, if any, of—

(A) lower tier ("old") crude oil (separately identifying any California lower tier crude oil, as defined in § 211.62 of Part 211 of this chapter, and the gravity in degrees API of such California lower tier crude oil at the time of the sale);

(B) upper tier ("new") crude oil (separately identifying any California upper tier crude oil, as defined in

§ 211.62 of Part 211 of this chapter, and the gravity in degrees API of such California upper tier crude oil at the time of the sale), excluding any crude oil transported through the trans-Alaska pipeline; and

(C) crude oil transported through the trans-Alaska pipeline. With respect to any property which has not qualified as a stripper well property, and from which crude oil is only sold to one purchaser, the requirements of this paragraph (a)(2)(i) may be complied with by a one-time certification to the purchaser of the property's monthly base production control level determined pursuant to § 212.72, whether based upon production and sale of crude oil in 1972 or upon production and sale of old crude oil in 1975, and, if applicable either the property's adjusted base production control level determined pursuant to § 212.76 or the information necessary to compute such adjusted base production control level pursuant to § 212.76; *provided, however,* that the producer shall certify to the purchaser the amounts and gravity of California lower tier crude oil and California upper tier crude oil in each sale.

Subsection (a)(2)(i), in 43 F. R. 33679 (8/1/78), effective 9/1/78, read as follows until its amendment in 44 F. R. 25828 (5/2/79), effective 6/1/79:

(2) *Non-stripper well properties.* (i) With respect to each sale of crude oil from a property which has not qualified as a stripper well property, the producer shall certify in writing to the purchaser the number of barrels, if any, of—

(A) lower-tier ("old") crude oil (separately identifying any California lower-tier crude oil, as defined in § 211.62 of Part 211 of this chapter, and the gravity in degrees API of such California lower tier crude oil at the time of the sale);

(B) upper-tier ("new") crude oil (separately identifying any California upper tier crude oil, as defined in § 211.62 of Part 211 of this chapter, and the gravity in degrees API of such California upper tier crude oil at the time of the sale), excluding any crude oil transported through the trans-Alaska pipeline;

(C) crude oil transported through the trans-Alaska pipeline; and

(D) incremental tertiary crude oil as determined pursuant to § 212.78.

With respect to any property (except a property with respect to which any amount of crude oil is or at any time has been certified by the producer as incremental tertiary crude oil) which has not qualified as a stripper well property, and from which crude oil is only sold to one purchaser, the requirements of this paragraph (a)(2)(i) may be complied with by a one-time certification to the purchaser of the property's monthly base production control level determined pursuant to § 212.72, whether based upon production and sale of crude oil in 1972 or upon production and sale of old crude oil in 1975, and, if applicable, either the property's adjusted base production control level determined pursuant to § 212.76 or the information necessary to compute such adjusted base production control level pursuant to § 212.76; *provided, however,* that the producer shall certify to the purchaser the amounts and gravity of California lower tier crude oil and California upper tier crude oil in each sale.

Subsection (a)(2)(iii) in 41 F. R. 43393 (10/1/76), effective 9/1/76, and read as follows until its amendment in 44 F. R. 22010 (4/12/79), effective 6/1/79:

(iii) The certification required under this paragraph (a)(2) of this section shall be made within the consecutive two-month period immediately following the month of September 1976 or, with respect to any property from which crude oil has not been produced and sold prior to September 30, 1976, the certification required under this paragraph (a)(2) of this section shall be made within the two-month period immediately following the first month in which crude oil is produced and sold.

Subsection (a)(3) originated in 41 F. R. [illegible] (8/26/76), effective 9/1/76, read as follows until its amendment in 41 F. R. 47309 (9/3/76), effective 9/1/76:

(3) *Unitized properties.* (i) With respect to each sale of crude oil from a

unitized property for which the producer has determined a unit base production control level, the producer shall certify in writing to the purchaser the number of barrels of new crude oil (and whether "actual new crude oil" or "imputed new crude oil" determined pursuant to 10 CFR 212.75(b)), the number of barrels of old crude oil, and the number of barrels of imputed stripper well crude oil (if any) determined pursuant to 10 CFR 212.75(b). With respect to any unitized property for which the producer has determined a unit base production control level, and from which crude oil is only sold to one purchaser, the requirements of this paragraph (a)(3)(i) may be complied with by a one-time written certification to the purchaser of (A) the monthly unit base production control level determined pursuant to 10 CFR 212.75(b); (B) the amount of imputed new crude oil (if any, determined pursuant to 10 CFR 212.75(b)); and (C) the amount of imputed stripper well crude oil (if any, determined pursuant to 10 CFR 212.75(b)).

(ii) With respect to each unitized property for which the producer has determined a unit base production control level, the producer shall certify in writing once to each purchaser of crude oil produced from the property:

(A) the highest posted price at 6 a.m., local time May 15, 1973, for transactions in that grade of crude oil in that field, or if there was no posted price in that field for that grade of domestic crude oil, the related price for that grade of domestic crude oil which is most similar in kind and quality in the nearest field for which prices were posted; and

(B) the highest posted price on September 30, 1975, for transactions in that particular grade of crude oil in that field in September 1975, or if there was no posted price in that field for that grade of domestic crude oil, the related price for that grade of domestic crude oil which is most similar in kind and quality in the nearest field for which prices were posted.

(iii) The one-time certification required under paragraph (a)(3)(ii) of this section, and the one-time certification permitted under paragraph (a)(3)(i) of this section, shall be made on or before October 1, 1975, provided that with respect to any unitized property for which a unit base production control level has not been established prior to August 1, 1976, the one-time certification required under paragraph (a)(3)(ii) of this section, and the one-time certification permitted under paragraph (a)(3)(A) of this section, shall be made within 60 days from the date when such unit base production control level is established.

Subsection (a)(3), in 41 F. R. 37309 (9/3/76), effective 9/1/76, read as follows until its amendment in 41 F. R. 43393 (10/1/76), effective 9/1/76:

(3) *Unitized properties.* (i) With respect to each sale of crude oil from a unitized property for which the producer has determined a unit base production control level, the producer shall certify in writing to the purchaser the number of barrels of new crude oil (and whether "actual new crude oil" or "imputed new crude oil" determined pursuant to 10 CFR 212.75(b)), the number of barrels of old crude oil, and the number of barrels of imputed stripper well crude oil (if any) determined pursuant to 10 CFR 212.75(b). With respect to any unitized property for which the producer has determined a unit base production control level, and from which crude oil is only sold to one purchaser, the requirements of this paragraph (a)(3)(i) may be complied with by a one-time written certification to the purchaser of (A) the monthly unit base production control level determined pursuant to 10 CFR 212.75(b); (B) The amount of imputed new crude oil (if any, determined pursuant to 10 CFR 212.75(b)); and (C) The amount of imputed stripper well crude oil (if any, determined pursuant to 10 CFR 212.75(b)).

(ii) With respect to each unitized property for which the producer has determined a unit base production control level, the producer shall certify in writing once to each purchaser of crude oil produced from the property:

(A) The highest posted price at 6 a. m., local time, May 15, 1973, for transactions in that grade of crude oil in that field, or if there was no posted price in that field for that grade of domestic crude oil, the related price for that grade of domestic crude oil which is most similar in kind and quality in the nearest field for which prices were posted; and

(B) The highest posted price on September 30, 1975, for transactions in that particular grade of crude oil in that field in September 1975, or if there was no posted price in that field for that grade of domestic crude oil, the related price for that grade of domestic crude oil which is most similar in kind and quality in the nearest field for which prices were posted.

(iii) The one-time certification required under paragraph (a)(3)(ii) of this section, and the one-time certification permitted under paragraph (a)(3)(i) of this section, shall be made on or before October 1, 1975, provided that with respect to any unitized property for which a unit base production control level has not been established prior to August 1, 1976, the one-time certification required under paragraph (a)(3)(ii) of this section, and the one-time certification permitted under paragraph (a)(3)(i) of this section, shall be made within 60 days from the date when such unit base production control level is established.

Subsection (a)(3)(i), in 41 F. R. 43393 (10/1/76), effective 9/1/76, read as follows until its amendment in 42 F. R. 41565 (8/17/77), effective 6/1/77:

(3) *Unitized properties.* (i) With respect to each sale of crude oil from a unitized property for which the producer has determined a unit base production control level, the producer shall certify in writing to the purchaser the number of barrels of new crude oil (if any, and whether "actual new crude oil" or "imputed new crude oil" determined pursuant to 10 CFR 212.75(b)), the number of barrels of old crude oil, and the number of barrels of imputed stripper well crude oil (if any) determined pursuant to 10 CFR 212.75(b). With respect to any unitized property for which the producer has determined a unit base production control level, and from which crude oil is only sold to one purchaser, the requirements of this paragraph (a)(3)(i) of this section may be complied with by a one-time written certification to the purchaser of (A) the monthly unit base production control level determined pursuant to 10 CFR 212.75(b); (B) the amount of imputed new crude oil (if any, determined pursuant to 10 CFR 212.75(b)); and (C) the amount of imputed stripper well crude oil (if any, determined pursuant to 10 CFR 212.75(b)).

Subsection (a)(3)(i), in 42 F. R. 41565 (8/17/77), effective 6/1/77 read as follows until its amendment in 42 F. R. 62897 (12/14/77), effective 1/1/78:

(3) *Unitized properties.* (i) With respect to each sale of crude oil from a unitized property for which the producer has determined a unit base production control level, the producer shall certify in writing to the purchaser the number of barrels of—

(A) lower-tier ("old") crude oil;

(B) upper-tier ("new") crude oil, if any, including either "actual new crude oil" or "imputed new crude oil" determined pursuant to § 212.75(b), but excluding any crude oil transported through the trans-Alaska pipeline;

(C) crude oil transported through the trans-Alaska pipeline, if any; and

(D) imputed stripper well crude oil, if any, determined pursuant to § 212.75(b). With respect to any unitized property for which the producer has determined a unit base production control level, and from which crude oil is only sold to one purchaser, the requirements of this paragraph (a)(3)(i) may be complied with by a one-time written certification to the purchaser of—

(A) the monthly unit base production control level, determined pursuant to § 212.75(b);

(B) the number of barrels of "imputed new crude oil," if any, determined pursuant to § 212.75(b), excluding any crude oil transported through the trans-Alaska pipeline;

(C) the number of barrels of crude oil transported the trans-Alaska pipeline, if any; and

(D) the number of barrels of imputed stripper well crude oil, if any, determined pursuant to § 212.75(b).

Subsection (a)(3)(i), in 42 F. R. 62897 (12/14/77), effective 1/1/78, read as follows until its amendment in 43 F. R. 26540 (6/20/78), effective 6/1/78:

(3) *Unitized properties.* (i) With respect to each sale of crude oil from a unitized property for which the producer has determined a unit base production control level, the producer shall certify in writing to the purchaser the number of barrels of—

(A) lower tier ("old") crude oil (separately identifying any California lower tier crude oil as defined in § 211.62 of Part 211 of this chapter);

(B) upper tier ("new") crude oil, if any, including either "actual new crude oil" or "imputed new crude oil" determined pursuant to § 212.75(b), but excluding any crude oil transported through the trans-Alaska pipeline;

(C) crude oil transported through the trans-Alaska pipeline, if any; and

(D) imputed stripper well crude oil, if any, determined pursuant to § 212.75(b). With respect to any unitized property for which the producer has determined a unit base production control level, and from which crude oil is only sold to one purchaser, the requirements of this paragraph (a)(3)(i) may be complied with by a one-time written certification to the purchaser of—

(A) the monthly unit base production control level, determined pursuant to § 212.75(b);

(B) the number of barrels of "imputed new crude oil," if any, determined pursuant to § 212.75(b), excluding any crude oil transported through the trans-Alaska pipeline;

(C) the number of barrels of crude oil transported through the trans-Alaska pipeline, if any; and

(D) the number of barrels of imputed stripper well crude oil, if any, determined pursuant to § 212.75(b).

Subsection (a)(3)(i), in 43 F. R. 26540 (6/20/78), effective 6/1/78, read as follows until its amendment in 43 F. R. 33679 (8/1/78), effective 9/1/78:

(3) *Unitized properties.* (1) With respect to each sale of crude oil from a unitized property for which the producer has determined a unit base production control level, the producer shall certify in writing to the purchaser the number of barrels of—

(A) lower tier ("old") crude oil (separately identifying any California lower tier crude oil, as defined in § 211.62 of Part 211 of this chapter, and the gravity in degrees API of such California lower tier crude oil at the time of the sale);

(B) upper tier ("new") crude oil, if any (separately identifying any California upper tier crude oil, as defined in § 211.62 of Part 211 of this chapter, and the gravity in degrees API of such California upper tier crude oil at the time of the sale), including either "actual new crude oil" or "imputed new crude oil" determined pursuant to § 212.75(b), but excluding any crude oil transported through the trans-Alaska pipeline;

(C) crude oil transported through the trans-Alaska pipeline, if any; and

(D) imputed stripper well crude oil, if any, determined pursuant to § 212.75(b).

With respect to any unitized property for which the producer has determined a unit base production control level, and from which crude oil is only sold to one purchaser, the requirements of this paragraph (a)(3)(i) may be complied with by a one-time written certification to the purchaser of—

(A) the monthly unit base production control level, determined pursuant to § 212.75(b);

(B) the number of barrels of "imputed new crude oil," if any, determined pursuant to § 212.75(b), excluding any crude oil transported through the trans-Alaska pipeline;

(C) the number of barrels of crude oil transported through the trans-Alaska pipeline, if any; and

(D) the number of barrels of imputed stripper well crude oil, if any, determined pursuant to § 212.75(b); *provided, however,* that the producer shall certify to the purchaser the amounts and gravity of California lower tier crude oil and California upper tier crude oil in each sale.

Subsection (a)(3)(i), in 43 F. R. 33679 (8/1/78), effective 9/1/78, read as follows until its amendment in 44 F. R. 25828 (5/2/79), effective 6/1/79:

(3) *Unitized properties.* (i) With respect to each sale of crude oil from a unitized property for which the producer has determined a unit base production control level, the producer shall certify in writing to the purchaser the number of barrels of—

(A) lower-tier ("old") crude oil (separately identifying any California lower tier crude oil, as defined in § 211.62 of Part 211 of this chapter, and the gravity in degrees API of such California lower tier crude oil at the time of the sale);

(B) upper-tier ("new") crude oil, if any (separately identifying any California upper tier crude oil, as defined in § 211.62 of Part 211 of this chapter, and the gravity in degrees API of such California upper tier crude oil at the time of the sale), including either "actual new crude oil" or "imputed new crude oil" determined pursuant to § 212.75(b), but excluding any crude oil transported through the trans-Alaska pipeline;

(C) crude oil transported through the trans-Alaska pipeline, if any;

(D) incremental tertiary crude oil determined pursuant to § 212.78; and

(E) imputed stripper well crude oil, if any, determined pursuant to § 212.75(b).

With respect to any unitized property (except such a property with respect to which any amount of crude oil is or at any time has been certified by the producer as incremental tertiary crude oil) for which the producer has determined a unit base production control level, and from which crude oil is only sold to one purchaser, the requirements of this paragraph (a)(3)(i) may be complied with by a one-time written certification to the purchaser of—

(A) the monthly unit base production control level, determined pursuant to § 212.75(b);

(B) the number of barrels of "imputed new crude oil," if any, determined pursuant to § 212.75(b), excluding any crude oil transported through the trans-Alaska pipeline;

(C) the number of barrels of crude oil transported through the trans-Alaska pipeline, if any; and

(D) the number of barrels of imputed stripper well crude oil, if any, determined pursuant to § 212.75(b); *provided, however,* that the producer shall certify to the purchaser the amounts and gravity of California lower tier crude oil and California upper tier crude oil in each sale.

Subsection (a)(3)(iii) in 41 F. R. 43393 (10/1/76), effective 9/1/76, and read as follows until its amendment in 44 F. R. 22010 (4/12/79), effective 6/1/79:

(iii) The certification required under this paragraph (a)(3) of this section shall be made within the consecutive two-month period immediately following the month of September 1976, or, with respect to any unitized property for which a unit base production control level has not been established prior to September 30, 1976, the certification required under this paragraph (a)(3) of this section shall be made within the consecutive two-month period immediately following the first month in which such unit base production control level is established.

Subsection (a)(4) originated in 41 F. R. 36172 (8/26/76), effective 9/1/76, and read as follows until its amendment in 41 F. R. 47390 (10/29/76), effective 9/1/76:

(4) *New purchasers.* With respect to any purchaser who has not purchased crude oil from the property (or the unitized property) concerned prior to August 1, 1976, the one-time certifications required under paragraphs (a)(2)

(ii) and (a)(3)(ii) of this section, and the certifications permitted under paragraphs (a)(2)(i) and (a)(3)(i) of this section, shall be made within 60 days from the date such purchaser first purchases crude oil from that property or unitized property.

Subsection (a)(4), in 41 F. R. 37309 (9/3/76), effective 9/1/76, read as follows until its republication without change in 41 F. R. 43393 (10/1/76), effective 9/1/76:

(4) *Other domestic crude oils the first sale of which is exempt from this part.* (i) With respect to each sale of crude oil exempt from the provisions of this part, other than crude oil produced from a stripper well property, the producer shall certify in writing once to each purchaser of crude oil produced and sold from that property that the first sale of crude oil produced and sold from that property is exempt from the provisions of this part.

(ii) For purposes of this paragraph (a)(4), domestic crude oil the first sale of which is exempt from the provisions of this part includes U. S.-owned petroleum sold by the Secretary of the Navy under the Naval Petroleum Reserves Production Act of 1976 (Pub. L. 94-258).

Subsection (a)(4), in 41 F. R. 43393 (10/1/76), effective 9/1/76, read as follows until its amendment in 43 F. R. 33679 (8/1/78), effective 9/1/78:

(4) *Other domestic crude oils the first sale of which is exempt from this part.* (i) With respect to each sale of crude oil exempt from the provisions of this part, other than crude oil produced from a stripper well property, the producer shall certify in writing once to each purchaser of crude oil produced and sold from that property that the first sale of crude oil produced and sold from that property is exempt from the provisions of this part.

(ii) For purposes of this paragraph (a)(4), domestic crude oil the first sale of which is exempt from the provisions of this part includes U. S.-owned petroleum sold by the Secretary of the Navy under the Naval Petroleum Reserves Production Act of 1976 (Pub. L. 94-258).

Subsection (a)(5) originated in 41 F. R. 37309 (9/3/76), effective 9/1/76, and read as follows until its amendment in 41 F. R. 43393 (10/1/76), effective 9/1/76:

(5) *New purchasers.* With respect to any purchaser who has not purchased crude oil from the property (or the unitized property) concerned prior to August 1, 1976, the one-time certifications required under paragraphs (a)(1), (a)(2)(ii), and (a)(3)(ii) of this section, and the certifications permitted under paragraphs (a)(2)(i) and (a)(3)(i) of this section, shall be made within 60 days from the date such purchaser first purchases crude oil from that property or unitized property.

Subsection (b) originated in 39 F. R. 42246 (12/4/76), effective 12/4/74, and read as follows until its amendment in 41 F. R. 36172 (8/26/76), effective 9/1/76:

(b) With respect to each allocation sale under § 211.65 of this chapter, the seller shall certify in writing to the purchaser the amount of old crude petroleum deemed (under the provisions of § 211.67(f) of this chapter) to be included in the volume of crude petroleum so sold. Such written certification shall be made within 25 days following the month in which the crude oil so sold is delivered to or for the account of the purchaser.

Subsection (b), in 41 F. R. 36172 (8/26/76), effective 9/1/76, read as follows until its amendment in 41 F. R. 37309 (9/3/76), effective 9/1/76:

(b)(1) Each seller of domestic crude oil, other than a producer of domestic crude oil covered by paragraph (a)(1) of this section shall, with respect to each sale of domestic crude oil either (i) an allocation sale pursuant to § 211.65 of Part 211, or (ii) a sale in which no volumes of old crude oil are deemed to have been transferred pursuant to § 211.67 (g) of Part 211, certify in writing to the purchaser the amount of old crude oil included in the volume of domestic

crude oil so sold. The certification shall also contain a statement that the price charged for the domestic crude oil is no greater than the maximum price permitted pursuant to this part.

(2) Each seller of domestic crude oil, other than a producer of domestic crude oil, shall make the certification required by this paragraph as soon as practicable after receipt of the required certifications from its sellers, but in no event later than 30 days following such receipt. However, if the domestic crude oil is not sold until after the expiration of the thirty-day period, the certification required by this paragraph shall be made within ten days following the sale of the domestic crude oil.

Subsection (b)(1), in 41 F. R. 37309 (9/3/76), effective 9/1/76, read as follows until its amendment in 42 F. R. 41565 (8/17/77), effective 6/1/77:

(b)(1) Each seller of domestic crude oil, other than a producer of domestic crude oil covered by paragraph (a) of this section, shall, with respect to each sale of domestic crude oil other than (i) an allocation sale pursuant to § 211.65 of Part 211, or (ii) a sale in which no volumes of domestic crude oil are deemed to have been transferred pursuant to § 211.67(g) of Part 211, certify in writing to the purchaser the respective volumes of and respective per barrel prices for the old crude oil, new crude oil, stripper well crude oil, and other domestic crude oils the first sale of which is exempt from the provisions of this part included in the volume of domestic crude oil so sold. The certification shall also contain a statement that the price charged for the domestic crude oil is no greater than the maximum price permitted pursuant to this part.

Subsection (b)(1), in 42 F. R. 41565 (8/17/77), effective 6/1/77 and read as follows until its amendment in 42 F. R. 62897 (12/14/77), effective 1/1/78:

(b)(1) Each seller of domestic crude oil, other than a producer of domestic crude oil covered by paragraph (a) of this section, shall, with respect to each sale of domestic crude oil other than an allocation sale pursuant to § 211.65 of Part 211, or a sale in which no volumes of domestic crude oil are deemed to have been transferred pursuant to § 211.67(g) of Part 211, certify in writing to the purchaser the respective volumes of and respective per barrel prices for the—

(i) lower-tier ("old") crude oil;

(ii) upper tier ("new") crude oil, exclusive of any crude oil transported through the trans-Alaska pipeline;

(iii) crude oil transported through the trans-Alaska pipeline;

(iv) stripper well crude oil; and

(v) other domestic crude oils the first sale of which is exempt from the provisions of this part—

included in the volume of domestic crude oil so sold. The certification shall also contain a statement that the price charged for the domestic crude oil is no greater than the maximum price permitted pursuant to this part.

Subsection (b)(1), in 42 F. R. 62897 (12/14/77), effective 1/1/78 read as follows until its amendment in 42 F. R. 64956 (12/29/77), effective 1/1/78:

(b)(1) Each seller of domestic crude oil, other than a producer of domestic crude oil covered by paragraph (a) of this section, shall, with respect to each sale of domestic crude oil other than an allocation sale pursuant to § 211.65 of Part 211, or a sale in which no volumes of domestic crude oil are deemed to have been transferred pursuant to § 211.67(g) of Part 211, certify in writing to the purchaser the respective volumes of and respective per barrel prices for the—

(i) lower tier ("old") crude oil (separately identifying any California lower tier crude oil, as defined in § 211.62 of Part 211 of this chapter);

(ii) upper tier ("new") crude oil, exclusive of any crude oil transported through the trans-Alaska pipeline;

(iii) crude oil transported through the trans-Alaska pipeline;

(iv) stripper well crude oil; and

(v) other domestic crude oils the first sale of which is exempt from the provisions of this part—included in the vol-

ume of domestic crude oil so sold. The certification shall also contain a statement that the price charged for the domestic crude oil is no greater than the maximum price permitted pursuant to this part.

Subsections (b)(1)(i)-(ii), in 42 F. R. 64956 (12/29/77), effective 1/1/78, read as follows until its amendment in 43 F. R. 26540 (6/20/78), effective 6/1/78:

(i) lower tier ("old") crude oil (separately identifying any California lower tier crude oil, as defined in § 211.62 of Part 211 of this chapter);

(ii) upper tier ("new") crude oil, exclusive of any crude oil transported through the trans-Alaska pipeline;

Subsection (b)(1), in 43 F. R. 26540 (6/20/78), effective 6/1/78, read as follows until its amendment in 43 F. R. 33679 (8/1/78), effective 9/1/78:

(b)(1) Each seller of domestic crude oil, other than a producer of domestic crude oil covered by paragraph (a) of this section, shall, with respect to each sale of domestic crude oil other than an allocation sale pursuant to § 211.65 of Part 211, or a sale in which no volumes of domestic crude oil are deemed to have been transferred pursuant to § 211.67(g) of Part 211, certify in writing to the purchaser the respective volumes of and respective per barrel prices for the—

(i) lower tier ("old") crude oil (separately identifying California lower tier crude oil, as defined in § 211.62 of Part 211 of this chapter, and the gravity in degrees API of such California lower tier crude oil at the time of the sale);

(ii) upper tier ("new") crude oil (separately identifying any California upper tier crude oil, as defined in § 211.62 of Part 211 of this chapter, and the gravity in degrees API of such California upper tier crude oil at the time of the sale), exclusive of any crude oil transported through the trans-Alaska pipeline,

(iii) crude oil transported through the trans-Alaska pipeline;

(iv) stripper well crude oil; and

(v) other domestic crude oils the first sale of which is exempt from the provisions of this part—included in the volume of domestic crude oil so sold. The certification shall also contain a statement that the price charged for the domestic crude oil has been determined in accordance with Subpart L of this part.

Subsection (b)(3) originated in 42 F. R. 62897 (12/14/77), effective 1/1/78.

Subsection (c) originated in 39 F. R. 42246 (12/4/76), effective 12/4/76 and read as follows until its amendment in 41 F. R. 36172 (8/26/76), effective 9/1/76:

(c) No firm may sell domestic crude petroleum unless it provides the certification required by this section. No firm may knowingly purchase domestic crude petroleum for which there is no certification as required by this section; provided, however, that the provisions of this paragraph do not apply to the sale of domestic crude petroleum to a firm under circumstances of economic or other coercion in which the buyer, because of its need for crude petroleum, had no reasonable alternative but to purchase the domestic crude petroleum for which there is no certification, and such firm promptly reports the purchase to the Federal Energy Administration for investigation.

Subsection (c), in 41 F. R. 36172 (8/26/76), effective 9/1/76 read as follows until it was deleted in 42 F. R. 62897 (12/14/77), effective 1/1/78 and the former subsection (d) was redesignated as subsection (c):

(c) With respect to each allocation sale under § 211.65 of Part 211, the seller shall certify in writing to the purchaser the amount of old crude oil deemed (under the provisions of § 211.67(f) of Part 211) to be included in the volume of crude oil so sold. Such certification shall be made within 45 days following the month in which the crude oil is delivered to or for the account of the purchaser.

Subsection (d) originated in 40 F. R. 28446 (7/7/75), effective 7/1/75 and

Office - Supreme Court, U.S.
FILED
DEC 16 1981
ALEXANDER L. STEVAS,
CLERK

Nos. 81-936, 81-952 and 81-962

In the Supreme Court of the United States

OCTOBER TERM, 1981

CHARLES GOSS, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

R. STANLEY CORBITT, PETITIONER

v.

UNITED STATES OF AMERICA

JAMES E. FISHER, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITIONS FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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TABLE OF AUTHORITIES

Page

Cases:

American Construction Co. v. *Jacksonville, Tampa & Key West Ry.*, 148 U.S. 372 4

Brotherhood of Locomotive Firemen & Enginemen v. *Bangor & Aroostook R.R.*, 389 U.S. 327 4

Hamilton Shoe Co. v. *Wolf Brothers*, 240 U.S. 251 4

Statutes and regulation:

Economic Stabilization Act of 1970, Section 211(b)(2), 12 U.S.C. 1904 note 2

Emergency Petroleum Allocation Act of 1973, 15 U.S.C. 751 *et seq.* 2

Section 5(a)(1), 15 U.S.C. 754(a)(1) 1-2

Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. 1961 *et seq.* 2

18 U.S.C. 1962 3

18 U.S.C. 1962(c) 3

18 U.S.C. 1001 3

18 U.S.C. 1341 3

18 U.S.C. 1343 3

10 C.F.R. 212.131(b)91) 3

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MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioners contend that the exclusive appellate jurisdiction of the Temporary Emergency Court of Appeals (TECA) over "all appeals from the district courts of the United States in cases and controversies arising under"

Section 5(a)(1) of the Emergency Petroleum Allocation Act of 1973, 15 U.S.C. 754(a)(1) (which incorporates Section 211(b)(2) of the Economic Stabilization Act of 1970, 12 U.S.C. 1904 note) extends to appeals by the United States from the dismissal of indictments charging mail fraud, wire fraud, false representation within the jurisdiction of the Federal Energy Administration, and conspiracy to violate the racketeering enterprise statute. Petitioners also contend that their indictments should be dismissed because the criminal provisions of the Emergency Petroleum Allocation Act of 1973 (EPPA), 15 U.S.C. 751 *et seq.*, preempt the application of other federal criminal statutes and that the EPAA regulations fail to provide fair warnings.[1]

Petitioner R. Stanley Corbitt (No. 81-952), together with the Crude Company, John Allen Masek,[2] the Mid-Atlantic Petroleum Company and others, was charged in a 29-count indictment returned in the United States District Court for the Southern District of Texas with participation in a fraudulent scheme to certify "old" oil as "new" oil and to make false certifications in furtherance of that scheme.[3]

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[1]Petitioner Fisher (No. 81-962) also contends that several counts in his indictment should have been dismissed on the ground that there was an inappropriate use of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. 1961 *et seq.*, and that insufficient facts were alleged to constitute commercial bribery. Petitioner Fisher further contends that the court of appeals reviewed the dismissal of his indictment under an incorrect standard.

[2]The Crude Company and Masek are petitioners in No. 81-828, in which we filed a response on Dec. 3, 1981.

[3]As the court of appeals explained (81-962; Pet. App. A-3 n.2):

> The price at which domestic crude oil may lawfully be sold depends *inter alia* on its origin. As resellers, appellees were obliged to "certify" that the oil they traded came from "old" or "new" wells since different ceiling prices applied to each. The gravamen of the Government's charge is that appellees purchased "old" oil and resold it as "new," willfully using fraudulent means to miscertify it in the process.

Petitioners Charles Goss and Ball Marketing Enterprise (No. 81-936), and petitioner James E. Fisher (No. 81-962) were charged with the Uni Oil Company and others in an 84-count indictment returned in the United States District Court for the Southern District of Texas with participation in a similar scheme.

In the Mid-Atlantic Petroleum Company indictment, petitioner Corbitt was charged with 21 counts of mail fraud (in violation of 18 U.S.C. 1341), and with six counts of making false statements in a matter within the jurisdiction of the Federal Energy Administration (in violation of 18 U.S.C. 1001). Petitioner Corbitt was also charged with participating in a pattern of racketeering activity (in violation of 18 U.S.C. 1962(c)) and with conspiracy to violate that statute. In the Uni Oil Company indictment, petitioners Goss, Ball Marketing and Fisher were charged with 32 counts of mail fraud (in violation of 18 U.S.C. 1341), with 25 counts of wire fraud (in violation of 18 U.S.C. 1343), and with 25 counts of making false statements in a matter within the jurisdiction of the Federal Energy Administration (in violation of 18 U.S.C. 1001). They were also charged with participating in a pattern of racketeering activity (in violation of 18 U.S.C. 1962(c)), and with conspiracy to violate that statute.

The district court dismissed both indictments on the grounds that the EPAA preempts application of 18 U.S.C. 1341, 1001 and 1962 to the conduct alleged in the indictment and that the certification regulations (particularly 10 C.F.R. 212.131(b)(1)) do not give fair notice and cannot be the predicate for a criminal prosecution. The district court also dismissed the counts under 18 U.S.C. 1001 on the further ground that the statute does not apply to statements such as EPAA certifications, which are not submitted directly to a government agency. The appeals were consolidated and the court of appeals reversed, first rejecting the jurisdictional

argument that the district court decision in these cases arose under the EPAA, thus giving the TECA exclusive jurisdiction over the appeals (81-962 Pet. App. A6-A13).

Petitioners' contentions (see pages 1-2, *supra*) are not presently ripe for review by this Court. The court of appeals' decision places petitioners in precisely the same position they would have occupied if the district court had denied their motions to dismiss the indictments. If petitioners are acquitted following a trial on the merits, their claims will be moot. If, on the other hand, petitioners are convicted, they will then be able to present their present contentions to this Court, together with any other claims they may have, in a petition for a writ of certiorari seeking review of a final judgment against them. Accordingly, review by this Court of the court of appeals' decision would be premature at this time. See, *e.g.*, *Brotherhood of Locomotive Firemen & Enginemen* v. *Bangor & Aroostook R.R.*, 389 U.S. 327 (1967); *American Construction Co.* v. *Jacksonville, Tampa & Key West Ry.*, 148 U.S. 372, 384-388 (1893); *Hamilton Shoe Co.* v. *Wolf Brothers*, 240 U.S. 251, 257-258 (1916).[4]

It is therefore respectfully submitted that the petitions for a writ of certiorari should be denied.

REX E. LEE
Solicitor General

DECEMBER 1981

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[4]Because this case is interlocutory, we are not responding on the merits to the questions presented by the petitions. We will file a response on the merits if the Court requests. On the jurisdictional question, we recently responded to a similar issue in *Zang* v. *United States*, No. 81-146; we have sent a copy of our brief in opposition in that case to counsel for petitioners.

DOJ-1981-12